

## DEPARTMENT OF REVENUE

### Taxpayer Service Division – Tax Group

## SALES AND USE TAX

### 1 CCR 201-4

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

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#### Regulation 39-26-102.1. [Repealed eff. 10/30/2014]

#### Regulation 39-26-102(1.3) AUCTIONEERS

##### (1) Auctioneer's Duty to Collect Tax

###### (a) Definitions

(i) *Auction sale.* An auction sale is a sale conducted by an auctioneer who solicits offers to purchase tangible personal property or services until the highest offer is made.

(ii) *Auctioneer.* An auctioneer is a person who sells an interest in tangible personal property or taxable services owned by the auctioneer or another person at an auction sale. An auctioneer has the legal authority to accept on behalf of the seller an offer to buy. An interest in property or services includes a lease and license. A person selling goods on consignment for another is an auctioneer if the sale is made at an auction sale. An auctioneer includes a person who is a lienholder, such as storageman, pawnbroker, motor vehicle mechanic, or artisan, and is selling the property at an auction sale to foreclose such lien.

(b) *General Rule.* An auctioneer is a retailer and, therefore, must collect, report, and remit Colorado sales tax and state-administered local sales taxes to the Department, even if the auctioneer is a disclosed agent of the owner.

(c) *Calculation of Tax.* Sales tax is calculated on the gross price paid by the buyer for the purchase of taxable tangible personal property or a taxable service, including any non-optional fee that only successful bidders must pay in order to purchase taxable goods or services, even if the non-optional fee is separately stated from the bid price paid for the auctioned item.

###### (i) Examples.

(A) Auctioneer sells restaurant equipment at auction for \$10,000 and charges a fee of ten percent of the selling price, which is deducted from the total sale proceeds paid by the purchaser(s). Sales tax is calculated on the selling price paid by a successful bidder (\$10,000), which includes the ten percent auctioneer's fee. Similarly, the fee is included in the sales tax calculation if the purchaser is required to pay the fee in addition to the successful bid price (i.e., tax calculated on \$11,000) because the fee is included in the overall purchase price of the item.

- (B) Auctioneer charges owners or bidders a flat “entrance” fee which compensates auctioneer for its cost to rent the auction facilities, advertising, insurance, and/or auctioneer's administrative overhead. The fee is collected from sellers and bidders regardless of whether the owner's good(s) sells or the bidder purchases auctioned property or a service. The fee is not included in the calculation of sales tax because the fee is charged regardless of whether there is a taxable sale of goods or services. However, the fee is included in the calculation of sales tax if the fee (whether a flat or percentage fee) is due and payable only when goods or services are sold.
  - (C) Auctioneer charges buyer a fee for additional services that buyer has the option, but is not required, to purchase as part of buyer's purchase of auctioned property or services, such as an optional fee for auctioneer's or seller's service of delivering the auctioned goods to buyer. The optional fee paid by buyer is not included in the sales tax calculation if, and only if, the fee is separately stated on the buyer's invoice.
- (d) *Local Sales Taxes.* The location where the auction sale is conducted determines what, if any, state-administered local sales taxes apply, except as otherwise noted below. For motor vehicles sold at auction, an auctioneer, who is required to collect sales tax (see paragraph (2)(b), below), must collect the sales taxes of those state-administered local tax jurisdictions in which the location of the sale and the location where the motor vehicle will be registered are the same.
  - (i) *Examples.*
    - (A) Auctioneer conducts auction sale of office equipment at its sale yard located in Weld County. The seller is located in Arapahoe County. To facilitate the auction, the equipment is moved to the auctioneer's sale yard in Weld County. Buyers take possession of and title to the equipment at the auctioneer's Weld County auction yard. Except for motor vehicles, a sale takes place, for purposes of sales tax, where and when the purchaser takes possession of, or title to, the property. Because both possession and title are transferred in Weld County, the sale takes place in Weld County and auctioneer must collect Weld County sales tax. Auctioneer does not collect Arapahoe County sales tax, even though the seller is located in Arapahoe County because the sale takes place in Weld County.

- (B) Auctioneer has a sale yard in Weld County but conducts an auction sale of restaurant equipment, including a motor vehicle owned by the restaurant, at the restaurant's place of business, which is located in Berthoud, Larimer County. Buyers take possession of and title to the restaurant equipment in Berthoud. The purchaser of the motor vehicle resides in Arapahoe County, which is where the vehicle will be registered. Auctioneer collects Berthoud city sales tax and Larimer County sales tax on all the restaurant equipment because the sale takes place in those state-administered local tax jurisdictions. Auctioneer does not collect Weld County sales tax on any of the property because the sale occurred in Berthoud, Larimer County. If the auctioneer is not a licensed automotive dealer, then the auctioneer does not collect any tax for the sale of the vehicle. If the auctioneer is a licensed automotive dealer, the auctioneer does not collect Berthoud city sales tax or Larimer county sales tax on the motor vehicle because the city and county in which the sale occurs (Berthoud / Larimer) is not the same city or county in which the vehicle will be registered (Arapahoe County).
- (ii) *Exceptions.* An auctioneer does not collect the state-administered local taxes applicable to the place of sale if purchaser takes possession of the property (including possession by an agent of the purchaser, such as a transportation company engaged by buyer to pick up the property) outside the local jurisdiction where the sale takes place and in which the auctioneer does not have a business presence. See, §29-2-105(1)(b), C.R.S. (Retailer does not collect local sales tax if the property is delivered outside retailer's local tax jurisdiction).
- (A) *Examples.*
  - (I) Auctioneer conducts an auction at its sale yard in Weld County. Purchaser A, who is located in Larimer County, uses its own vehicle to pick up the property at the auctioneer's sale yard. Purchaser B, who is located in Arapahoe County, requests auctioneer to arrange the delivery of the property by common carrier to Purchaser B. Auctioneer collects state-administered Weld County sales tax for Purchaser A because Purchaser A takes possession of the property in Weld County (i.e., the sale occurs in Weld County). For Purchaser B, auctioneer does not collect Weld County sales tax because the sale occurs where Purchaser B takes possession (and presumably title) in Arapahoe County. Auctioneer does not have sale yard or other business presence in Arapahoe County and, therefore, has no obligation to collect Arapahoe County sales tax.
  - (II) Same facts as example (I) above, but auctioneer has a sale yard in both Weld County and a satellite office in Arapahoe County. Same result as example (I), except auctioneer must collect Arapahoe County sales tax from Purchaser B because the sale takes place in Arapahoe County and auctioneer has a business presence in Arapahoe County.

- (III) Auctioneer conducts an auction at its place of business in Weld County but the property is stored at the owner's warehouse, which is located in Pueblo County. Purchasers take delivery (and title) of the auctioned property in Pueblo County. Auctioneer does not have a satellite office in Pueblo County, but auctioneer sent three employees to Pueblo County to inventory, arrange, and label the property and to supervise a pre-auction viewing by prospective bidders. Because the sale takes place where delivery or title pass to purchasers, the sale occurs in Pueblo County where purchasers take possession (and presumably title), not Weld County where the auctioneer and bidders are located at the time of sale. Even though auctioneer does not have an office in Pueblo County, auctioneer has sufficient business activity in Pueblo County to be required to collect Pueblo County sales tax.

(2) **Exceptions to Auctioneer's Duty to Collect**

- (a) *Licensed Owners.* An auctioneer is not required to collect sales tax if the auctioneer sells taxable tangible personal property or services on behalf of a seller who, at the time of the sale, holds a current Colorado sales tax license issued by the Department. The licensed owner is responsible for collecting, remitting, and filing a sales tax return, even if the auctioneer was contractually obligated to the owner to collect the sales tax from the purchaser(s) and report and remit the tax to the Department, or if the auctioneer was contractually required to remit such collected tax to the licensed owner. An auctioneer, who is not legally required to collect tax because the owner is a licensed retailer but is collecting such tax on behalf of the owner, must disclose to the successful bidder the owner's name and owner's retail license number. An auctioneer who is not legally responsible to collect sales tax because the owner is a licensed retailer, but who nevertheless collects sales tax from a purchaser must hold the same in trust on behalf of the State of Colorado, and is liable for such tax if the tax is not remitted to the licensed seller or the Department.
- (b) *Sales of motor vehicles.* An auctioneer is not required to collect sales taxes due on the sale of a motor vehicle, unless the auctioneer is licensed by Colorado as an automotive dealer pursuant to §12-6-101, et seq., C.R.S and the sale or use of the vehicle is subject to tax. § 39-26-113(7)(a) and (b), C.R.S.
- (c) *Property Exempt from Sales Tax.* An auctioneer does not collect sales tax if the property is exempt from sales tax, such as an exempt farm close-out sale.
- (d) *Burden of Proof.* An auctioneer has the burden of establishing with objective, verifiable documentation an exception or exemption from collecting, reporting, and remitting sales tax. An auctioneer selling on behalf of a licensed seller or to a purchaser with a sales tax exemption certificate must obtain a copy of the owner's sales tax license or, in the case of an exempt sale, the sales tax license number or the purchaser's sales tax exemption certificate, and verify that such license or certificate is valid at the time of the sale.

Cross Reference(s):

1. Please visit the Department's website ([www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax)) for online services available for verifying tax licenses and exemption certificates.
2. See Department Rule 39-26-716.4(a) regarding an auctioneer's duties for an exempt farm close-out sale.

3. See Department Regulation 39-26-718 for information on charitable entities conducting fundraising by auction sales.
4. See, Department Publication FYI Sales 56, “Sales Tax on Leases of Motor Vehicles and Other Tangible Personal Property” for additional information about when local sales taxes must be collected by retailers on sales of motor vehicles.

**Regulation 26-102.2.5. [Repealed eff. 05/30/2014]**

**REGULATION 39- 26-102.3**

- 1) “Doing business in this state” under C.R.S. 39-26-102(3)(a) requires that the person both (1) sell, lease, or deliver tangible personal property in this state, and (2) maintain, directly or indirectly, an office, salesroom, warehouse, or similar place of business within the state. A person meeting these requirements must obtain a Colorado Sales Tax License. “Doing business in this state” under C.R.S. 39-26-102(3)(b) requires that the person both (1) sell, lease, or deliver tangible personal property in this state, and (2) regularly or systematically make solicitations in this state. A person meeting these requirements should obtain a Colorado Retailer’s Use Tax License or a Colorado Sales Tax License.
- 2) The solicitation required by (3)(b)(i) of section 39-26-102 C.R.S. may be by any means whatsoever, including advertising by catalogues, newspapers, radio, television, e-mail, or Internet. The solicitation need not originate in this state. It is sufficient that the vendor purposefully direct the advertising into the state, which includes national or international advertising that includes Colorado.
- 3)
  - a) Any retailer that does not collect Colorado tax (the “remote retailer”) and is a component member of a controlled group of corporations, which controlled group also contains a retailer with a physical presence in this state (the “in-state retailer”), is presumed to be doing business in the state at a level sufficient to require the collection of Colorado sales tax. The remote retailer is required to register with the department and is required to collect Colorado sales tax.
  - b) The presumption articulated in a) may be rebutted by the remote retailer by a showing that the in-state retailer did not engage in any constitutionally sufficient solicitation on behalf of the remote retailer.
  - c) A retailer that does not collect Colorado tax is a retailer that sells taxable property or services to customers who are not exempt from sales tax, but does not collect sales or use tax.
  - d) In-state retailer includes any member of the controlled group of corporations that has a controlling interest in any in-state retailer regardless of the form of doing business of the in-state retailer.

**Regulation (39-) 26-102.4.5.**

For purposes of this regulation food includes food and drink.

Any food, as specified in 7 U.S.C. section 2012(g), as such section exists on October 1, 1987, or is thereafter amended, which is purchased with food stamps pursuant to the federal food stamp program is exempt from the state sales tax and from all local sales taxes, including those of home rule municipalities.

Any food, as specified in 42 U.S.C. section 1786, as such section exists on October 1, 1987, or is thereafter amended, which is purchased with WIC vouchers or checks pursuant to the federal special supplemental program for women, infants, and children is exempt from the state sales tax and from all local sales taxes, including those of home rule municipalities.

If a purchase is exempt from the state sales tax as a qualified purchase with food stamps or WIC vouchers or checks, it is also exempt for Regional Transportation District (RTD) sales tax purposes and for tourism tax purposes.

Any food not purchased with federal food stamps or WIC vouchers or checks is subject to taxation or exemption as provided in paragraphs 1, 2 and 3 below:

1.

a.

- (1) Food for domestic home consumption as defined by the federal food stamps program in 7 U.S.C. sec. 2012(g) is exempt from taxation as provided below, except for those items specified in 1.c. (This list of food and nonfood items under the federal food stamp program is intended as a guide and not a complete listing.) The federal food stamp program definition of food includes, among other items, meat, poultry, fish, bread and breadstuffs, cereals, vegetables, fruits, fruit and vegetable juices, dairy products, coffee, tea, cocoa, candy, breath mints, condiments, spices, soft drinks, cakes, cookies, potato chips, special dietary foods (e.g., diabetic and dietetic), enriched or fortified foods, health food items (e.g., Metrecal, Enfamil, Sustegen, wheat germ, brewer's yeast, sunflower seeds which are packaged for human consumption, rose hips powder which is used for preparing tea, and other food products which are substituted for more commonly used food items in the diet), infant formulas, and items incorporated into foods with other ingredients (e.g., pectin, lard, and vegetable oils).
- (2) Seeds and plants which produce food for human consumption are exempt from sales taxes only when they are purchased with food stamps. However, for state sales tax purposes see §39-26-716(4)(b), C.R.S..
- (3) Water marketed in containers and ice for human consumption are exempt from taxation, except for carbonated water as specified in 1.c.(1) of this regulation.

b. Items which are considered nonfood items under the federal food stamp program and thus are subject to sales tax include:

- (1) Nonfood items even if sold in grocery or similar type stores (e.g., hardware, clothing, common household items such as cooking utensils, cleaning and paper products, soaps, toiletry articles, grooming items and cosmetics);
- (2) Alcoholic beverages but excluding cooking wine, wine vinegar, and non-alcoholic cocktail mixes;
- (3) Tobacco and tobacco products (except that cigarettes are exempt from the sales tax by virtue of §39-26-706(1), C.R.S.);
- (4) Foods which are hot at the point of sale and which are kept above room temperature to make them palatable and suitable for immediate consumption, food marketed to be heated on the premises whether or not hot at the point of sale, and other food sold for consumption on the premises;

- (5) Items not intended for human consumption (e.g., laundry starch, pet foods, other animal foods, and seeds marketed or packaged as bird seed);
  - (6) Items specifically labeled as being for use other than human consumption (e.g., decorative dye for hard cooked eggs);
  - (7) Food preservation equipment and items (e.g., pressure cookers, canning jars and lids, paraffin, freezer containers, and wrapping paper);
  - (8) Medicines (except that prescription drugs are exempt from the state sales tax by virtue of §39-26-717(1)(a), C.R.S.);
  - (9) Therapeutic products and deficiency correctors (e.g., vitamins and minerals which are marketed in various form such as tablets, capsules, powders and liquids; products such as cod liver oil which is used primarily as a source of vitamins A and D; and other such items which are primarily used for medicinal purposes or as health aids). (These products serve as supplements to food or food products rather than as food and, therefore, are not eligible. Because essential vitamins and minerals occur naturally in foods, a good diet will include a variety of foods that together will supply all nutrients needed. Since these products serve as deficiency correctors or therapeutic agents to supplement diets deficient in essential nutrition rather than as foods, they are not eligible.);
  - (10) Health aids (e.g., patent medicines and other products used primarily as health aids and therapeutic agents, including aspirin, cough drops or syrups, cold remedies, and antacids); and
  - (11) Coffee and related food products sold to offices and commercial establishments as part of a “coffee” service.
- c. Items which may qualify as food under the federal food stamp program but do not qualify as food for purposes of the sales tax exemption (unless purchased with federal food stamps or WIC vouchers or checks) include:
- (1) Carbonated water marketed in containers (e.g., sparkling or seltzer water; however, tonic water, pop and other sugar or sugar substitute carbonated beverages do qualify for the sales tax exemption);
  - (2) Chewing gum;
  - (3) Seeds and plants to grow food (e.g., tomato or other fruit or vegetable plants or seeds, however; for state sales tax purposes see §39-26-716(4)(b), C.R.S.);
  - (4) Prepared salads, other than frozen salads, requiring refrigeration sold in any size or type of container (e.g., egg salad, potato salad, fruit salad, pasta salad, gelatin salad, bean salad, fish salad, poultry salad, meat salad, etc.) whether prepared by the retailer on site or at a warehouse, or by a manufacturer for sale to and by a retailer;
  - (5) Salad bars (i.e., cut up fruits and vegetables sold in various sized servings, usually by the pound or plate, along with accessory foods and condiments, such as soup, rolls, crackers, and salad dressings);
  - (6) Cold sandwiches other than frozen sandwiches;

- (7) Deli trays (e.g., meats, fish, cheeses, fruits or vegetables, etc., sold on trays prepared by or for the retailer);
    - (8) Food sold by or through vending machines; and
    - (9) Prepared food or food marketed for immediate consumption as specified in paragraphs 2 or 3 below.
  - d. It is not the obligation of a retailer to collect the sales tax on food marketed for domestic home consumption which after purchase is converted to or used for other purposes which are taxable. Such conversion or use is subject to any applicable sales or use tax (e.g., edible oil used to lubricate machines and food and coffee purchased for office or commercial uses).
- 2. While food marketed for domestic home consumption, with exceptions noted above, generally qualifies for the sales tax exemption, prepared food or food marketed for immediate consumption generally does not qualify. The following guidelines apply in determining whether food is considered food for home consumption contrasted with prepared food or food for immediate consumption:
  - a. Prepared food or food marketed for immediate consumption includes all food furnished or served for consumption at tables, chairs, or counters, or from trays, glasses, dishes, or other tableware provided by the retailer.
  - b. All hot foods and food marketed to be heated on the premises are considered to be prepared for immediate consumption and are therefore subject to tax regardless of the nature of the business making such sale and regardless of whether immediately consumed.
  - c. Prepared food or food marketed for immediate consumption also includes food served or furnished in or by restaurants, cafes, lunch counters, hotels, drugstores, social clubs, nightclubs, cabarets, resorts, snack bars, caterers, carryout shops, and other like places of business at which prepared food is regularly sold, including sales from pushcarts, motor vehicles, and other mobile facilities. (See §39-26-104(1)(e) C.R.S.)
  - d. The following types of establishments typically do not sell food marketed for domestic home consumption: newsstands; gift shops; shops located in public transportation centers; offices or other public or commercial buildings; entertainment facilities (e.g., theaters); and recreation facilities (e.g., sports arenas and stadiums).
  - e. The following types of establishments typically do sell food marketed for domestic home consumption: grocery stores, convenience stores, bakeries, butcher shops, fruit and vegetable stores, and department stores.
- 3. In determining whether food is considered for domestic home consumption or prepared food or food for immediate consumption, the following guidelines apply to the specialized establishments enumerated below:
  - a. Bakery and Pastry Shops
    - (1) Sales by bakeries or pastry shops which do not have eating facilities are not subject to tax;



- (2) Sales by bakeries or pastry shops which have eating facilities are taxable except for items sold on a take-out or to-go basis not to be consumed at the eating facilities provided by the retailer.
- b. Ice Cream Shops
  - (1) Sales of ice cream cones, cups, sundaes, and the like, marketed for immediate consumption are subject to tax.
  - (2) Items marketed in containers or packages for domestic home consumption, such as ice cream, ice cream bars, popsicles and fudgesicles, toppings sold in cans or jars, and cakes or pies, are not taxable.
- c. Caterers. Normally all food sold by a caterer is subject to tax. However, if such caterer operates a retail store selling food items marketed for domestic home consumption, the rules governing taxability of food as set forth in paragraphs 1 and 2 apply. Sales by caterers of food from motor vehicles and other mobile facilities are taxable.
- d. Restaurants, Snack Bars, Carry Outs, Etc. All food sold by restaurants and similar establishments is subject to tax. (See §39-26-104(1)(e), C.R.S. However, when such restaurants also operate a pastry, ice cream, or grocery type sales operation, the rules applicable to such establishments apply to sales made from such operations.
- e. Liquor Stores. Food marketed for domestic home consumption by a liquor store is exempt. Alcoholic beverages, including spirituous, malt or vinous liquors, are taxable. However, cocktail mixes which do not contain alcohol, cooking wines, and wine vinegars are exempt.
- f. Street Vendors. Street vendors (e.g., push carts, mobile food stands, and the like) will generally be subject to tax on all their sales. Sales of vegetables, fruit, and other groceries marketed for domestic home consumption by mobile markets or door-to-door vendors are exempt.
- g. Vending Machines. All sales of food vended by or through machines are taxable except that all vending machine sales of 15 cents or less are exempt from the state sales tax.
- h. See, also, the exemption for certain vending machine sales in §39-26-714(2), C.R.S., which is effective on January 1, 2000, for state sales tax. For municipal and county sales taxes, the vending machine food exemption is effective only if the local government adopts the exemption by ordinance or resolution.

**Regulation 26-102.5.**

“Gross taxable sales” means the gross sales of a person during any given reporting period,

- (a) Excluding:
  - (1) The sales price of any property returned during the period after the sales price has been included in taxable sales, but only after the full sales price including the tax has been refunded by cash or credit;
  - (2) Sales exempt from the sales tax;
  - (3) The fair market value of property taken in exchange by a retailer for resale in the usual course of his business;

- (4) Any worthless account actually charged off for income tax purposes during the reporting period, to the extent such account has been included in taxable sales, except that a loss from a worthless check in excess of the taxable sale is not allowed as a bad debt deduction for the excess; and
- (b) Including any recovery of a bad debt previously deducted from gross sales to determine taxable sales.

See regulation (39)-26-111 for credit sales.

Adjustments in a sales price, such as allowable discounts, rebates and credits, cannot be anticipated; i.e., the tax must be based upon the original price unless the adjustments actually have been made prior to the filing of the return wherein such sale is reported. However, if the price upon which the tax was computed and paid to the state by the vendor is subsequently adjusted prior to payment of the tax by the purchaser, a proper credit may be taken by the vendor against the tax due on the next return.

No credit for discount will be allowed to a vendor unless the related decrease in sales tax actually is passed on to the purchaser.

A cash discount allowed for payment on or before a given date is not an allowable adjustment to the selling price in determining taxable sales.

If any vendor makes overpayment of the tax or is entitled to a credit on his tax payments because of mistake, errors or canceled sales, credit for the amount of overpayment may be taken by the vendor on a subsequent return; but if the vendor is no longer engaged in business, he should apply for a refund. (See Regulation 39-26-703(2)(e).)

If any sold article is returned to the vendor for adjustment, replacement, or exchange under a guarantee as to quality or service, and if another article is substituted pursuant to the guarantee free or at a reduce price, the tax shall be recomputed on the actual amount paid to the vendor for the substituted article, taking into consideration any other adjustments made at the time of the replacement.

**Regulation (39-) 26-102.7(a).**

“Purchase price” includes:

- (1) The amount of money received or due in cash and credits.
- (2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- (3) Any consideration valued in money, such as trading stamps or coupons whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
- (4) The total price charged on credit sales including finance charges which are not separately stated.

An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated is not part of the purchase price.

- (5) Installation, delivery and wheeling-in charges included in the purchase price and not separately stated.

- (6) Repealed.
- (7) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
- (8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon. (See regulation 26-102.12.)

"Purchase price" does not include the fair market value of property exchanged if such property is to be sold thereafter in the retailers usual course of business. This is not limited to exchanges in Colorado. Out of state trade-ins are an allowable adjustment to the purchase price. Matthews v. State of Colo., Dept. of Revenue, 193 Colo 44, 562 P2d 415 (1977).

**Regulation 26-102.7(b). [Repealed eff. 05/30/2014]**

**Regulation 26-102.9.**

"Retail sale " includes all sales of tangible personal property and the sales of those services specifically enumerated in the Act as rooms and accommodations, gas and electric service, steam, and telephone and telegraph service, and all such sales are subject to the tax imposed by this Act. A retail sale is a sale to the user or consumer of such tangible personal property or service. "Retail sale" does not include a wholesale sale.

For the purposes of this Article, a retail sale is a sale to the user or consumer of such tangible personal property or service whether such sale is made by a licensed vendor or is between private parties.

**Regulation 26-102.10.**

"Sale" or "sale and purchase" shall mean any transaction, except as provided in 26-102.7(b), whereby a person, in exchange for any consideration, such as money or its equivalent, property, the rendering of a service, or the promise of any of these things: (a) transfers or agrees to transfer all or part of his interest, or the interest of any other for whom he is acting as an agent, in any tangible personal property to any other person; or (b) performs or furnishes, or agrees to perform or furnish, or contracts to have another perform or furnish, any service taxable under this Act for any other person. Whether the transaction is absolute or conditional, it shall be considered a sale if it transfers from a seller to a buyer the ownership or possession of tangible personal property or specified services.

A bona fide gift of tangible personal property is not a "sale".

**Regulation 26-102.11.**

A "room" is a regular sleeping room or unit which is a part of a hotel, apartment hotel, inn, lodging house, guest house, motor hotel, motel, mobile home, dude ranch or guest ranch, for which a charge is made for its use.

"Accommodation" includes the furnishing of space in any camp grounds, auto camp, trailer court or park, under any concession, permit, right to access, license to use, or any other agreement by or through which any such space may be used or occupied. Accommodations are exempt from taxation if rented for at least thirty consecutive days during the calendar year or preceding year.

(See Regulation 39-26-704(3).)

**Regulation 26-102.12.**

Sales and use tax applies to charges for manufacturing, producing, fabricating, and processing tangible personal property which has been made-to-order or tailor-made for the customer. Manufacturing, producing, fabricating or processing is usually deemed to have occurred when tangible personal property is created, transformed or reduced to a different state, quality, form, property or thing. Transformation may occur by hand, machine, art, chemical action or natural means.

An operation which restores a used or worn item of tangible personal property to its essentially original form and use is not considered manufacturing, producing, fabricating or processing within the meaning of this regulation.

The amount charged the purchaser for labor or services rendered in installing and applying purchased tangible personal property is not subject to tax; provided, that such amount is separately stated and such separate statement is not to avoid the tax upon the actual sales price of tangible personal property.

Any person making a sale subject to this regulation must be licensed and may purchase tax free all articles of tangible personal property which enter into and become a component part of the article sold. Purchases of all other articles of tangible personal property not becoming an ingredient or component part of the finished product are taxable.

**Regulation 39-26-102.13            [Repealed 07/01/2012 per House Bill 11-1293]**

**Regulation 26-102.14. [Repealed eff. 07/30/2018]**

**Regulation 26-102.15.**

“Tangible personal property” embraces all goods, wares, merchandise, products and commodities, and all tangible or corporeal things and substances which are dealt in, capable of being possessed and exchanged, except news papers excluded by the law.

The term does not include real property, such as land and buildings, nor tangible personal property that loses its identity when it becomes an integral and inseparable part of the realty, and is removable only with substantial damage to the premises. Property severed from real estate becomes tangible personal property.

“Tangible personal property” does not include intangible personal property constituting mere rights of action and having no intrinsic value, such as contracts, deeds, mortgages, stocks, bonds, certificates of deposit or membership, or uncanceled United States postage or revenue stamps sold for postage or revenue purposes. The term also does not include water in pipes, conduits, ditches or reservoirs, but does include water in bottles, wagons, tanks or other containers.

An advertising supplement included in a newspaper is considered part of the newspaper and is exempt. See Special Regulation “Newspapers, Magazines And Other Publications”.

**Regulation 39-26-102.16. RETAIL SALES TAX [Repealed eff. 03/03/2014]**

**Regulation 39-26-102(17)            DEFINITION OF TAXPAYER**

In the statutory definition of “taxpayer”, the term “person obligated to account to the executive director” means any person obligated to make a return and to pay over to the Department any tax collected or to be paid under Article 26 of Title 39, C.R.S., and includes licensed or unlicensed retailers, sellers, consumers, and purchasers.

**Regulation 26-102.19.**

“Wholesale sale “ means all sales of tangible personal property or specified services to a licensed retail merchant, jobber, dealer, or wholesaler that purchases the property for resale, and all sales of tangible personal property or services specified in C.R.S. 1973, 39-26-104 to manufacturers and compounders that incorporate such tangible personal property or service into a substance, commodity or product for resale.

All sales to the user or consumer of tangible personal property or services specified in C.R.S. 1973, 39-26-104 are taxable retail sales, regardless of the purchaser's trade or business. A reporting form will be furnished annually to wholesalers to report such retail sales.

It is the duty of the vendor to collect the tax unless he is furnished with satisfactory proof that the sale is exempt by statute. Also it is the duty of the vendor to obtain the sales or store license number or other satisfactory proof if the purchase is for resale. In case of doubt, the department should be contacted or the tax collected.

It shall be presumed that any purchaser not having a valid sales tax license or store license is the ultimate user or consumer of any property that is purchased. Any sale to such a person will be a taxable retail sale regardless of the disposition of the property sold, unless the vendor can establish that the purchase was for resale in the ordinary course of the vendee's business.

**Regulation 26-102.20.**

The sale of tangible personal property to a person engaged in the manufacture or compounding of a product or service, where such tangible personal property becomes a physical part of such product or service, is a wholesale sale and exempt from sales tax. Any container, label or shipping case used to encase or enclose such product may be purchased tax free by the manufacturer or compounder.

Tax applies to the sale of tangible personal property to the manufacturer or compounder that purchases it for use as an aid in manufacturing, producing or processing tangible personal property and not for the purpose of physically incorporating it into the manufactured article to be sold. Examples of such property are machinery, tools, furniture, office equipment, and chemicals used as catalysts or otherwise to produce a chemical or physical reaction such as the production of heat or the removal of impurities.

“For all the reasons we have heretofore mentioned we must conclude that to be exempt from the operation of the acts, tangible personal property purchased by a manufacturer and which enters into the processing of the manufactured product, must be a constituent part thereof, wholly or partially, by either chemical or mechanical means”

“Applying these definitions to the words under consideration, it would seem certain they mean that to enter into the processing of an article, substance or commodity, tangible personal property must of necessity become a constituent part of such final product in the series of continuous operations and treatment leading to this result.” *Bedford v. C.F. and I.*, 102 Colo. 538, 81 F.2d 752 (1938); position reaffirmed in *Western Electric v. Weed, Jr.*, 185 Colo. 340, 524 P2d 1369 (1974).

Examples of manufacturing aids include but are not limited to the following:

- (1) Sales of CO<sub>2</sub> gas for use in the sale of draft beer are taxable to the vendor of the beer, since the vendor buys the gas for use in forcing the draft beer through the pipes rather than for the purpose of reselling the gas.

If the gas is purchased for the sole purpose of incorporating it into a product to be sold and is so incorporated into a product to be sold as in soda water or other beverages, the sale of the gas is exempt as a sale for resale.

- (2) Phosphoric and sulphuric acid used in a process known as anodizing aluminum are primarily used as electrolytes, acting as a catalyst, and do not become a component part of the aluminum objects that are processed. The processor is accordingly the consumer of such acids and is taxable at the time of purchase of such items.
- (3) Flux if used as a cleaning agent or as a means of reducing oxidation, is taxable to the manufacturer at the time of purchase. It may also be used for transmitting desirable alloys to the deposited metal. To the extent it is used for the latter purpose, it is not subject to sales tax to the manufacturer at the time of purchase. Since the different functions are not mutually exclusive, exempt and nonexempt purposes may be served simultaneously and in such cases the tax will have to be apportioned between the various uses.
- (4) Sulphur used in drying and curing fruit is regarded as used by the manufacturer, not as incorporated and resold and the tax is to be paid by the manufacturer when he purchases the sulphur.
- (5) Forged steel balls are used in a ball mill to grind silica sand to a desired fineness. In the course of the grinding, the balls wear cut, and they become incorporated into the finished product which is sold. The steel balls are purchased for the purpose of using them in the manufacturing processes and not primarily for the purpose of incorporating steel into a finished product. Accordingly, the manufacturer must pay sales tax on the steel balls at the time of purchase.
- (6) If ice is in fact used for the sole purpose of becoming an ingredient of the finished product, as where it used solely to supply all or a part of the water content of the sausage and luncheon meats, the sale of the ice may be regarded as a sale for resale and the processor is not required to pay tax at the time of purchase of the ice.  
  
If the ice or dry ice is used for any purpose other than to become an ingredient or component part of the finished product, it is purchased for a purpose other than for resale and is subject to tax to be paid at the time of purchase by the processor.
- (7) A rubber chemical used as a lubricant to facilitate mold release of rubber products, such as tires, and which may remain as a film on the finished rubber product is a manufacturing aid used as a lubricant by the manufacturer who is required to pay the sales tax at the time of purchase.
- (8) Cleaners purchased for use in preparing metal part surfaces prior to rust proofing do not become incorporated in the product and therefore the manufacturer is the user and must pay sales tax at the time of purchase.
- (9) When paint thinner, abrasives, cleaning compounds, masking tape and similar items are used by a person in painting tangible personal property, that person is the user of such items and must pay sales tax at the time of purchase.
- (10) Talc used as an anti-adhesive or lubricant in the manufacture of rubber products is a manufacturing aid and a sales tax is imposed on the manufacturer at the time of purchase.

**REGULATION 39-26-102.21**

1) Sales of Energy

- a) *Energy sale or use prior to March 1, 2010 and after June 30, 2012.* The sale, use, storage, or consumption of electricity, coal, gas, fuel oil, steam, nuclear fuel, and coke occurring before March 1, 2010 or after June 30, 2012 are exempt from sales and use tax when used for any of the following purposes: processing, manufacturing, mining (including oil and gas exploration and production), refining, irrigation, construction, telegraph, telephone and radio communication, street and railroad transportation services, and all industrial uses. See, Special regulation 19 “Gas and Electric Services” for acceptable methods of determining the credit allowed for gas and electricity used in restaurant operations.
- b) *Energy sale and use between March 1, 2010 and June 30, 2012.* The exemption from state sales and use tax set forth in subsection 1(a)(i), above, is suspended for such sale, use, storage, or consumption occurring on or after March 1, 2010 and before July 1, 2012, and sales and use tax are due thereon, unless otherwise exempt pursuant to other statutes (e.g., sale to, or use of energy by, charitable entities, schools, and governmental entities). An energy utility whose billing cycle includes exempt sales before and taxable sales after March 1 shall prorate the tax for such periods.
  - i) *Exceptions.* The suspension of the tax exemption described in subsection 1(a), above, shall not apply to purchases of:
    - (1) Diesel fuel for off-road use,
    - (2) Electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel used for agricultural purposes,
    - (3) Coal, gas, fuel oil, steam, coke, or nuclear fuel used for generation of electricity,
    - (4) Electricity, coal, gas, fuel oil, steam, coke, or nuclear fuel used by railroads.
  - ii) Application of exception to suspension of exemption.

HB 10-1190, which suspended the exemption described in 1(a), above, excluded from the suspension the applications described in 1(b)(i)(1)-(4). In these areas, the exemption continues to exist as described in 1(a). Thus, HB 10-1190 neither expanded nor limited the exemption in these specific areas. Off-road, agricultural, electricity generation, and railroad uses must still qualify for the exemption as described in 39-26-102(21)(a) C.R.S. and as further described in 1(a) of this rule. Thus, departmental guidance issued pursuant to this statute and rule apply for the period 3/1/2010-6/30/2012, including FYI 71 and the use of the DR 1666 form to claim the exemption.
  - iii) *State-administered cities, counties, and special districts.* Energy sales described in subsection 102(21) made on or after March 1, 2010 remain exempt from state-administered city, county, and special district sales and use taxes.

- c) *Energy sale and use for residential use.* The sale, use, storage, or consumption of electricity, coal, wood, gas, fuel oil, or coke sold for residential use is exempt from tax regardless of whether such sale, use, storage, or consumption occurs before or after March 1, 2010. See, regulation 39-26-715.1(a)(II) for additional details.
- 2) *Newspaper publishers and commercial printers.* Vendors must collect the tax on all sales of equipment and materials to publishers of newspapers and commercial printers, except on sales of newsprint and printer's ink, which are expressly exempt as wholesale sales. "Newsprint" is defined as cheap, machine-finished paper, chiefly from wood pulp, and used mostly for newspapers.
- 3) Definitions
  - a) "Agricultural purposes" means the production of agricultural commodities as defined in 39-26-102(1) C.R.S.
  - b) "Gas" means natural or manufactured gas used in the production of energy or used in industry to heat greenhouses, used by industrial plants engaged in manufacturing or used for melting metal in foundries, for firing brick kilns, or for other industrial uses.
  - c) "Industrial uses" means the use of electricity, coal, gas, fuel oil, coke, or nuclear fuel in a continuing business activity of manufacturing or producing tangible personal property or services as set forth in C.R.S. 39-26-104(1)(c) and (d.1).

**Regulation 26-102.22. [Repealed eff. 07/30/2018]**

**Regulation (39-) 26-102.23.**

If a lease or rental period is for more than three years, the lessor must collect and remit sales tax upon the rentals received from the lessee. Where an operator of a vehicle leases himself and his vehicle to another, this is not considered a lease. For leases of machinery for manufacturing, see Regulation 39-26-709(1). For leases or rentals for less than three years, see Regulation 39-26-713(1)(a).

**Regulation 39-26-103.5                      DIRECT PAYMENT PERMIT**

- (1) **General Rule.** A purchaser who holds a direct payment permit ("Qualified Purchaser") shall remit sales and use taxes directly to the Colorado Department of Revenue ("Department") and not to the retailer. Retailers who sell taxable goods or services to a Qualified Purchaser shall not collect sales tax from such purchasers.
- (2) **Qualified Purchaser Qualifications.** An applicant, which can be an entity or individual, for a direct payment permit must meet the following conditions.
  - (a) *Dollar Threshold.* An applicant must have had a minimum of \$7,000,000 in purchases on which Colorado state sales or use tax was owed during the twelve months preceding the application. The dollar threshold excludes purchases that are exempt from Colorado state sales and use tax, even if such purchases are subject to state-administered local sales or use taxes. See, §29-2-105, C.R.S. for a description of the local tax base. For example, the dollar threshold excludes exempt wholesale purchases of inventory. Additionally, commodities or tangible personal property that are to be erected upon or affixed to real property, such as building and construction materials and fixtures, are not included in the dollar threshold. See, §39-26-103.5(1)(a), C.R.S.



- (b) **Good Standing.** If an applicant has been subject to any tax administered by the Department for at least three years prior to the date of the application, an applicant cannot have been delinquent in collecting, remitting, or reporting any sales, use, income, or other tax administered by the Department for the immediate three years prior to the date applicant submits its application. If an applicant has not been subject to any tax administered by the Department for at least three years, the applicant cannot have been delinquent in collecting, remitting, or reporting taxes for any period after the date the applicant was first obligated to collect, remit, and report such taxes. The Department can waive this requirement if an applicant demonstrates to the satisfaction of the director or their designee that the failure to comply with the collecting, remitting, and reporting requirements was due to reasonable cause. In determining whether reasonable cause exists, the Department will consider, among other relevant aggravating and mitigating factors, whether:
    - (i) the failure was due to willful or reckless disregard of applicant's tax obligations;
    - (ii) the applicant failed to comply on more than one occasion;
    - (iii) the magnitude of the failure was significant in terms of dollars or time; and
    - (iv) the applicant made subsequent efforts to avoid future failures.
  - (c) **Accounting Systems and Practices.** An applicant must have in place an accounting system and set of practices that are acceptable to the Department. The accounting system and practices must fully and accurately report the amount of sales or use tax to be reported on the appropriate sales or use tax return(s), including state-administered local tax jurisdictions. The Department may revoke a direct payment permit and may make assessments of tax, penalties, or interest if such system or practices are not adequate to enable the Department to fully and accurately collect and allocate to cities, counties, and other local taxing entities all the sales and use taxes that the Department collects on behalf of such entities.
  - (d) A Qualified Purchaser is not required to be subject to the collection, remittance, and reporting requirements for sales taxes in order to obtain such a permit. Rather, a Qualified Purchaser can be subject to the collection, remittance, and reporting requirements for any tax administered by the Department.
- (3) **Effective Date.** A direct payment permit is effective from the date of issuance until December 31 of the third year following the year in which it is issued unless sooner revoked.
- (4) **Purchaser's Funds.** When a Qualified Purchaser uses a direct payment permit, the Qualified Purchaser must use its own funds when paying a retailer for a transaction to which the direct payment permit applies. Retailers cannot accept payment from persons other than the Qualified Purchaser, including payment from the personal funds of an individual if the permit is held in the name of an entity. Retailers must collect tax if a Qualified Purchaser is making a purchase with funds other than the Qualified Purchaser's funds and will be liable for unpaid taxes for transactions paid in contravention of this subsection (4).

(5) **Revocation of Permits.**

- (a) The Department may revoke a direct payment permit if the Qualified Purchaser violates any statute or rule governing the administration of sales and use taxes, or if in the opinion of the Department the Qualified Purchaser becomes otherwise unable to meet any of the conditions for holding a direct payment permit. The Department shall provide written notice of the revocation by first-class mail to the last known address of the Qualified Purchaser thirty days prior to the effective date of such revocation. The notice of revocation shall set forth:

- (i) the factual and legal basis for revocation,
- (ii) advise the Qualified Purchaser of its right to appeal, and
- (iii) the date the Department issued the notice.

The Department will issue a denial of a direct payment permit application in the same manner.

- (b) An applicant who is denied a permit or a Qualified Purchaser whose permit was revoked, may appeal the decision by submitting to the Department's executive director a written request for hearing. The notice of appeal must be received by the Department within thirty days of the date of issuance of the notice of revocation or denial and contain the permit holder's name, address, permit account number (for revocations), and the legal and factual basis explaining why the permit should not be revoked or denied. Qualified Purchaser's notice of appeal shall suspend the effective date of the revocation until a final order resolving the appeal is issued by the executive director or the director's designee. The executive director or director's designee shall conduct a hearing and issue a final ruling on such appeal within a reasonable time.

(6) **Reporting Requirements.**

- (a) A Qualified Purchaser holding a direct payment permit must directly remit to the Department all state and state-administered city, county and special district sales taxes that would have been collected by the retailer had the Qualified Purchaser purchased such goods or services without a direct payment permit.
- (i) *Exceptions.* A Qualified Purchaser holding a direct payment permit cannot pay county lodging taxes, county short-term rental taxes, and local marketing district taxes directly to the Department because such taxes are not sales taxes. Retailer must collect such taxes from the Qualified Purchaser and remit them to the Department. See, §30-11-107.5 and §30-11-107.7, C.R.S.
- (b) A Qualified Purchaser must report and remit state and state-administered local taxes on or before the 20th day of each month following the month the Qualified Purchaser purchases taxable goods or services with a direct payment permit.
- (c) The vendor must retain a copy of Qualified Purchaser's direct pay permit.

(7) **Determining Local Sales Taxes.**

- (a) *Service fees.* With regard to sales taxes only, a Qualified Purchaser may deduct from its remittance to the Department the service fee for state sales tax and any local service fee(s).

- (b) A sale occurs when and where a Qualified Purchaser takes title or possession of the good(s) or where a taxable service is performed.
- (c) If the Qualified Purchaser takes title or delivery of any taxable good(s) within the State of Colorado, then the Qualified Purchaser shall remit the state-administered local sales taxes for the local jurisdiction(s) in which the Qualified Purchaser took the title or delivery.
- (d) If the Qualified Purchaser takes title or delivery of any taxable good(s) outside the State of Colorado, then the Qualified Purchaser shall remit use tax for the location where the Qualified Purchaser first uses, stores, or consumes the goods.
- (e) Sales and use taxes of home rule cities and counties cannot be paid by direct payment permit to the Department, unless the Department has agreed to collect such taxes.
- (f) *Examples.*
  - (i) Qualified Purchaser takes delivery of goods at seller's store which is located in the City and County of Denver, Regional Transportation District (RTD) and Scientific and Cultural Facilities District (CD). Qualified Purchaser remits state sales tax and RTD/CD sales taxes to the Department because purchaser took possession in these state-administered local tax jurisdictions. Qualified Purchaser does not remit the City and County of Denver sales taxes to the Department because Denver is a home rule city and county and the Department does not administer their local taxes.
  - (ii) Seller, who is located in Arapahoe County and in RTD/CD special districts, ships goods with its own vehicle, or engages a common carrier (e.g., United States Postal Service, UPS, or other common carrier), to Qualified Purchaser which is located in that portion of El Paso County that also includes the Pikes Peak Rural Transportation Authority. Qualified Purchaser does not remit Arapahoe County or RTD/CD special districts sales taxes because the sale does not occur in those local tax jurisdictions. Qualified Purchaser remits Colorado state, El Paso County, and Pikes Peak Rural Transportation Authority sales taxes because the sale takes place in those state-administered local tax jurisdictions.
  - (iii) The same facts occur as in Example ii, except Qualified Purchaser engages a third-party transportation company to pick up the goods from seller's store. The Department will presume the third-party transportation company is acting as Qualified Purchaser's agent and the sale occurs in the local tax jurisdiction in which the third-party takes delivery from seller. Therefore, Qualified Purchaser remits Colorado state, Arapahoe County, RTD, and CD special district sales taxes to the Department.

**Regulation 26-103.5.6 [Repealed eff. 05/30/2014]**

**Regulation 39-26-104(1)(A) TAX ON TANGIBLE PERSONAL PROPERTY**

- (1) **General Rule.** Unless otherwise exempt, all retail sales of tangible personal property in this state, whether between private parties or a licensed vendor and vendee, are subject to the imposition of sales tax. Sales tax is also levied upon the sale of telephone, telegraph, steam, gas, and electric services, accommodations and the serving of meals, except in the case of specific statutory exemptions.
  - (a) If the sale consists of a number of items, each of which has a sales price less than the minimum taxable sale, the tax must be collected on the total sales price of all the items.

- (2) **Imposition of Tax.** The tax is imposed upon the purchaser.
- (a) If the transaction involves a licensed vendor, the duty is imposed upon the vendor to add the tax to the sales price and to collect and remit the tax to the Department.
  - (b) If the seller is a non-licensed vendor, or the licensed vendor fails to collect the sales tax, the purchaser shall pay the sales tax directly to the Department. If the Department has made available means to confirm the validity of a license, a purchaser who pays sales tax to a retailer who does not hold a valid retail, wholesale, or retailer's sales or use tax license issued by the Department remains liable for such tax unless the non-licensed retailer pays such tax to the Department.
  - (c) In the event that a licensed vendor fails to collect the appropriate sales tax, the Department may assess the sales tax due against the vendor or the purchaser, in its discretion.
    - (i) A purchaser who pays all applicable sales taxes to a Colorado licensed vendor has no further tax liability regardless of whether the vendor remits the taxes to the Department.

Cross References

1. "Tangible personal property" is defined §39-26-102(15), C.R.S.
2. *J.A. Tobin Construction Co. v. Hugh H.C. Weed, Jr.*, 158 Colo. 430, 407 P.2d 350 (1965).

**Regulation 39-26-104(1)(B)(I) EXCHANGED TANGIBLE PERSONAL PROPERTY**

- (1) **General Rule.** When tangible personal property is received by a retailer as part or full payment for the sale of tangible personal property, sales tax shall be calculated upon the purchase price of the tangible personal property sold, minus the fair market value of the tangible personal property exchanged by the purchaser, provided the property taken by the retailer in the exchange is to be resold in the usual course of the retailer's trade or business. The general rule applies to exchanges that occur both inside and outside Colorado (e.g., motor vehicles exchanged in another state and one or both cars are subsequently registered in Colorado).
- (2) **Exceptions.** The general rule does not apply if:
- (a) The property transferred from purchaser, or by a third party on behalf of the purchaser, to seller is not tangible personal property.
    - (i) *Examples.*
      - (A) Intangible property, such as stock certificates, and real property are not subject to sales or use tax.
      - (B) Services (because they are not property).
  - (b) Retailer does not resell, in the usual course of its business, the property transferred from purchaser.
    - (i) *Examples.*
      - (A) Retailer does not resell the property in a commercially reasonable period.

- (B) Retailer takes a used computer from buyer in exchange for the sale of a new computer to buyer. Retailer then donates the used computer to a school. A donation does not constitute a sale and, therefore, the initial exchange does not qualify under the general rule.
- (C) Retailer is in the business of selling only construction equipment. Buyer exchanges a boat as partial payment of its purchase of a large compressor. Retailer cannot reduce the price on which sales tax is calculated for the compressor by the fair market value of the boat even if the seller resells the boat. The resale of boats is not part of the retailer's usual course of business. Retailer and buyer also do not qualify for the vehicle exchange, even though the boat qualifies as a vehicle, because both the buyer and retailer must exchange vehicles. Therefore, both the retailer, as a licensed vendor, and buyer are liable for the sales tax on the purchase of the equipment and the retailer, as a buyer, is liable for sales tax on the fair market value of the boat (buyer would also be liable for the sales tax on the boat if buyer is a licensed retailer).

(ii) *Exception to the Resale Requirement -Vehicles.* The resale requirement does not apply if the property transferred (exchanged) by the seller to buyer is a vehicle and the property transferred (exchanged) by the buyer to the seller is a vehicle. Both vehicles must be subject to licensing, registration, or certification by the laws of Colorado. "Vehicles" include:

- (A) Trailers, semi-trailers, trailer coach,
- (B) Special mobile machinery (except such machinery used solely on property of the owner),
- (C) Vehicles designed primarily to be operated or drawn on public highways, (§§42-3-103(1) and 104, C.R.S.),
- (D) Watercraft (§33-13-103, C.R.S.),
- (E) Aircraft (Colorado does not license aircraft but Colorado law requires aircraft possessed in this state be licensed by FAA) (§43-10-114(1), C.R.S.).

Purchaser, on whom the obligation to pay sales tax is levied, is the person who pays money or other consideration in addition to the exchanged vehicle. If the seller is a licensed retailer, then the retailer must collect sales tax from the purchaser. Persons who engage in three or more such exchanges may be required to obtain a motor vehicle dealer's license

(c) Exchanges that do not occur at the same time and place. See, §39-26-104(1)(b).

(i) *Examples.*

- (A) Motor vehicle dealer sells a motor vehicle to buyer, who pays cash. Two weeks later, buyer decides to sell another vehicle he owns to the dealer. Buyer cannot claim a refund for taxes paid for the first purchase because the second vehicle was not exchanged as part of the first sale.

- (B) Retailer is in the business of leasing equipment. Customer rents a forklift for 30 days and retailer and customer agree at the time the lease is signed that customer will give retailer, as part of the payment, a used compressor that retailer intends to lease to third parties. The exchange does not qualify because the use of the forklift occurs over thirty days and does not occur at the same time and place as the exchange of the compressor. In contrast, a finance lease is treated as a credit sale and not as a true lease. An exchange involving a finance lease is treated as occurring at the same time and place as the other party's exchange of property.

**Cross Reference(s):**

1. For additional requirements regarding the collection of tax for motor vehicles, see §39-26-113, C.R.S.
2. See, §39-26-104(1)(b)(I)(B), C.R.S. and §12-6-101, et seq., C.R.S. for laws governing motor vehicle dealer licensing.

**Regulation 26-104.1(B)(I)(A) [Repealed eff. 02/14/2015].**

**Regulation 26-104.1(b)(I)(B) [Repealed eff. 05/30/2014].**

**Regulation 26-104.1(c)(I) Telephone, Telegraph and Mobile Telecommunications Services.**

- (a) Prior to August 1, 2002, intrastate telephone and telegraph service is subject to the tax imposed by C.R.S. 39-26-106, whether furnished by public, private, mutual, cooperative, or governmental corporations or agencies. The term "service" includes but is not limited to additional listings, joint-user service, non-talking circuits, leased circuits and facilities, local exchange service (whether on a flat or measured basis), information charges, service connection charges, and any other charges assessed or passed on to the consumer with the exception of charges for installation or repair which are taxed according to the Special Regulation on Contractors. Telephone service is taxable whether either local or toll calls are made or telegrams are sent from telephone pay stations.
- (b) On or after August 1, 2002, all telephone and telegraph services except those services defined as mobile telecommunications services under 4 United States Code section 124(7) which are intrastate telephone or telegraph service are subject to the tax imposed by C.R.S. 39-26-106, whether furnished by public, private, mutual, cooperative, or governmental corporations or agencies. The term "service" includes but is not limited to additional listings, joint-user service, non-talking circuits, leased circuits and facilities, local exchange service (whether on a flat or measured basis), information charges, service connection charges, and any other charges assessed or passed on to the consumer with the exception of charges for installation or repair which are taxed according to the Special Regulation on Contractors. Telephone service is taxable whether either local or toll calls are made or telegrams are sent from telephone pay stations.

- (c) On or after August 1, 2002 all charges made for mobile telecommunications services as defined under 4 United States Code section 124(7), including “cellular” communications services shall be subject to the tax imposed by this section only if the service is provided to a customer whose place of primary use is within Colorado, or for local taxes, where a customer whose place of primary use is within the local jurisdiction imposing a local sales tax administered by the Department. Intrastate charges for service which originates and terminates within the same state of the United States are taxable, regardless of whether that state is Colorado. Charges for end-to-end interstate mobile telecommunication service of a customer whose place of primary use is within Colorado are not subject to state or state collected sales tax regardless of whether the call originates in Colorado or another state.

Determination of place of primary use is controlled by 4 United States Code (USC) section 122, as amended. On August 1, 2002 this section read:

**§122. Determination of place of primary use**

- (a) **PLACE OF PRIMARY USE.** - A home service provider shall be responsible for obtaining and maintaining the customer's place of primary use (as defined in section 124). Subject to section 121, and if the home service provider's reliance on information provided by its customer is in good faith, a taxing jurisdiction shall -
- (1) allow a home service provider to rely on the applicable residential or business street address supplied by the home service provider's customer; and
  - (2) not hold a home service provider liable for any additional taxes, charges, or fees based on a different determination of the place of primary use for taxes, charges, or fees that are customarily passed on to the customer as a separate itemized charge.
- (b) **ADDRESS UNDER EXISTING AGREEMENTS.** — Except as provided in section 121, a taxing jurisdiction shall allow a home service provider to treat the address used by the home service provider for tax purposes for any customer under a service contract or agreement in effect 2 years after the date of the enactment of the Mobile Telecommunications Sourcing Act as that customer's place of primary use for the remaining term of such service contract or agreement, excluding any extension or renewal of such service contract or agreement, for purposes of determining the taxing jurisdictions to which taxes, charges, or fees on charges for mobile telecommunications services are remitted.

Terms used in this regulation are as defined under 4 USC section 124, as amended. On August 1, 2002 the applicable subsections read:

**CHARGES FOR MOBILE TELECOMMUNICATIONS SERVICES.** — The term “charges for mobile telecommunications services” means any charge for, or associated with, the provision of commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999, or any charge for, or associated with, a service provided as an adjunct to a commercial mobile radio service, that is billed to the customer by or for the customer's home service provider regardless of whether individual transmissions originate or terminate within the licensed service area of the home service provider.

- (7) **MOBILE TELECOMMUNICATIONS SERVICE.** — The term “mobile telecommunications service” means commercial mobile radio service, as defined in section 20.3 of title 47 of the Code of Federal Regulations as in effect on June 1, 1999.

- (8) PLACE OF PRIMARY USE. - The term `place of primary use' means the street address representative of where the customer's use of the mobile telecommunications service primary occurs, which must be -
- “(A) the residential street address or the primary business street address of the customer; and
- “(B) within the licensed service area of the home service provider.

**Regulation 26-104.1(d.1).**

Gas or electric service furnished within the state of Colorado is subject to the tax imposed by §39-26-106, C.R.S. whether furnished by public, private, mutual, cooperative, or governmental corporations or enterprises for commercial use. The tax attaches to all amounts paid by the user or consumer for gas or electric service, whether or not there is actual consumption, and regardless of the manner in which the payment is made.

Steam whether furnished for commercial or industrial uses, by public, private, mutual, cooperative, or governmental corporations or enterprises, is subject to the tax imposed by §29-26-106, C.R.S. unless purchased for resale in its original form.

(See Regulation 26-102.21 for certain limited exemptions.)

(See also §39-26-715(1)(a)(II), C.R.S. for exemptions on domestic consumption)

**Regulation 26-104.1(e).**

Nontaxable gratuities include cash tips (money left by the patrons for use of those providing the service), charge tips (amounts added to the sales check by the patron for use of those providing the service), banquet tips and tips separately stated and added to the sales check by the vendor at a flat rate, and the amount is distributed by the vendor to the persons who actually render the service.

“Cover charges” for food, services, and entertainment are taxable unless the charges for services and entertainment are separately stated.

**Regulation (39-) 26-104.1(f).**

Amounts paid for the use of furnished rooms or accommodations, as defined under, §39-26-102(11), C.R.S., 1973, are subject to the tax imposed under this section unless the rental period is for a term of thirty consecutive days or more, in which case the rental paid is exempt. (See also §39-26-704(3), C.R.S. and Regulation 39-26-704.3).

Deposits paid for rooms or accommodations are not taxable when paid in advance. When rooms or accommodations are furnished, any deposits previously paid are taxable.

**Rule 39-26-105. Remittance of Tax.**

**Basis and Purpose.** The statutory bases for this rule are §§ 39-21-112(1) and 119, C.R.S. and §§ 39-26-105, 107, 109, 112, and 118 C.R.S. The purpose of this rule is to clarify sales tax remittance requirements and conditions under which a retailer is eligible to deduct a retailer's service fee from the sales tax they remit.



(1) **Retailer Requirements.**

- (a) A retailer is liable and responsible for tax on the retailer's taxable sales made during the tax period prescribed for the retailer pursuant to 1 CCR 201-4, Rule 39-26-109, calculated using the tax rate in effect at the time of the sale and applied to all taxable sales, including all taxable sales made for less than the minimum amount subject to tax pursuant to § 39-26-106, C.R.S. A retailer is also liable and responsible, pursuant to § 39-26-112, C.R.S., for the payment of any tax collected in excess of the tax rate in effect at the time of the sale and must remit such excess amount to the Department.
- (b) A retailer shall file with the Department a return reporting its sales, including any sales exempt from taxation under article 26 of title 39, C.R.S., made during the preceding tax period. If a retailer makes no retail sales during its preceding tax period, the retailer must file a return reporting zero sales. Returns and any required supplemental forms must be completed in full.
- (c) A retailer must file returns and remit any tax due to the Department in accordance with the filing schedules prescribed by 1 CCR 201-4, Rule 39-26-109.

(2) **Due Date of Returns.** Sales tax returns and payments of tax reported thereon are due the twentieth day of the month following the close of the tax period. If the twentieth day of the month following the close of the tax period is a Saturday, Sunday, or legal holiday, the due date shall be the next business day.

(3) **Retailer's Service Fee.** Except as provided in this paragraph (3), a retailer may, in the remittance of collected sales tax, deduct and retain a retailer's service fee in the amount prescribed by § 39-26-105(1)(c), C.R.S.

- (a) If the retailer is delinquent in remitting any portion of the tax due, other than in unusual circumstances shown to the satisfaction of the executive director, the retailer shall not retain a retailer's service fee for any portion of the tax for which the retailer is delinquent.
- (b) If a retailer has retained a retailer's service fee pursuant to paragraph (3) of this rule and, subsequent to the applicable due date, owes additional tax for the filing period as the result of an amended return or an adjustment made by the Department, the retailer shall not be permitted to retain a retailer's service fee with respect to the additional tax, but the retailer may retain the retailer's service fee associated with the original return, so long as the retailer filed the original return in good faith.

Cross Reference(s):

- 1. Forms, returns, and instructions can be found online at [www.colorado.gov/tax](http://www.colorado.gov/tax).
- 2. For additional information about excess tax collected by a retailer, see § 39-26-112, C.R.S. and Rule 39-26-106, 1 CCR 201-4.
- 3. For information about electronic funds transfer (EFT) requirements and the timeliness of payments made via EFT, see Special Rule 1 Electronic Funds Transfer, 1 CCR 201-1.
- 4. For information about dates payments or returns are deemed to have been made, see § 39-21-119, C.R.S. and Rule 39-21-119, 1 CCR 201-1.
- 5. For information about electronic filing, see § 39-21-120, C.R.S. and Rule 39-21-120, 1 CCR 201-1.

**Regulation 39-26-105(1)(A) TAX RATE**

- (1) **General Rule.** A retailer shall collect the state sales tax and any applicable state-administered local sales taxes in effect at the time of the sale. If the retailer's filing period does not end on the day preceding the effective date of a new tax rate, the retailer must compute the amount of sales tax on its sales tax return using both tax rates.
- (a) **Leases and Credit Sales.** Retailers who enter into leases or credit sales subject to Colorado sales or use taxes must collect for each such payment the tax at the rate in effect when the credit sale or lease was first made.
- (i) Retailers who receive payments for a lease or credit sale after the effective date of a change in the tax rate must continue to collect the tax at the original rate. If the tax rate decreases and the retailer collects tax at the old rate on payments made after the effective date of the new tax rate, the retailer must report on their sales tax return the difference between the old tax rate and the new tax rate on the "Excess tax collected" line that is applicable to the tax jurisdiction whose tax rate has changed. Retailers cannot distribute the excess tax to the reporting columns of tax jurisdictions whose rate has not changed. If the tax rate increases and the retailer collects tax at the old rate on payments made after the effective date of the new tax rate, the retailer should contact the Department for instructions on filing the return.
- (A) Retailers who renew or extend a lease must collect on each subsequent payment the tax rate in effect on the effective date of such renewal or extension.
- (b) **Deferred Transactions.** Retailers who have conditional sales contracts or who remit tax on a cash basis for sales that occurred before a change in the tax rate must continue to collect the tax related to all payments made after the effective date of the new tax rate at the rate in effect at the time the contract or sale was originally made.

**39-26-105(1)(B) EXTENSIONS OF SALES AND USE TAX RETURNS**

- (1) **General Rule.** The Department may grant an extension of time to file a sales or use tax return upon a showing of good cause.
- (a) Taxpayer has the burden of demonstrating the factual and legal basis for granting the extension.
- (b) The Department will consider a number of factors, including whether:
- (i) filing on the deadline will create an undue hardship for the taxpayer;
- (ii) taxpayer previously made requests for extensions of time;
- (iii) the circumstances giving rise to the request for extension are not under taxpayer's control; and,
- (iv) if the extension is based on taxpayer's neglect, the neglect was not willful or a reckless disregard of taxpayer's filing obligation.
- (2) **Extension Request.** Taxpayer must generally file a request for an extension of time in writing in order to document that a request has been made. However, the Department may grant an extension without a written request if it is satisfied that good cause exists for an extension.

- (a) The request must provide the name of the taxpayer, Department tax account number, and the date to which taxpayer is requesting an extension
- (3) Granting an extension of time does not relieve taxpayer from interest charges, but granting an extension relieves taxpayer from penalty and penalty interest that would otherwise apply for filing a return after the due date.
- (4) An extension of time applies only to the return described in the Department's approval.
- (5) **Bulk close-out sale.** The deadline for a taxpayer to file a tax return for and to pay such sales or use taxes that arise from the sale of all or substantially all of a commercial entity or charitable organization's taxable property or services as part of a liquidation, merger, or reorganization of such entity or organization is automatically extended for four months. This automatic extension does not apply when the purchase prices for such taxable property or services are known at the time of sale, such as auction sales, inventory reduction or asset liquidation sales by retailers to the general public, and sales from an entity or organization to another entity or organization as part of a liquidation, merger, or reorganization who have agreed to the price(s) of such taxable property or services at the time of sale. The extension does not toll the accrual of interest after the original filing deadline. A taxpayer whose deadline for filing a tax return is automatically extended by this rule may request an additional extension of time pursuant to subparagraph (1), above.

Cross Reference(s):

- 1. For a mailing address and phone number to make an extension request, please see the Department's website at [www.colorado.gov/revenue/tax](http://www.colorado.gov/revenue/tax).
- 2. For information on when extensions for filing all tax returns can be authorized, see Department Regulation 39-21-112(1).

**Rule 39-26-105(3). Documenting Exempt Sales**

**Basis and Purpose.** The statutory bases of this rule are §§ 39-21-112(1), 39-21-113, 39-26-102(19), 39-26-102(22), 39-26-105(3), 39-26-106, 39-26-107, 39-26-204(2), 39-26-209, 39-26-703(1), 39-26-704(1), 39-26-708, 39-26-713(2)(d) and 39-26-718, C.R.S. The purpose of this rule is to establish the requirements a retailer must meet to be relieved of liability for the collection of sales and use tax.

- (1) **General Rule.** A seller must exercise due diligence with respect to any sale for which the purchaser claims exemption from sales tax. If evidence readily discernible to the seller at the time of the sale provides reason to doubt the purchaser's eligibility for the exemption claimed, the seller must obtain and retain sufficient information and documentation from the purchaser to resolve the doubt or must collect the applicable tax. If the Department subsequently finds a transaction was not exempt at the time of sale, a seller who has complied with this rule will be considered to have met its burden of proof and will be relieved of liability for the collection of tax with respect to that transaction. For purposes of this rule, sellers include both retailers and wholesalers.
- (2) **Seller's Due Diligence Requirements at Time of Sale.**
  - (a) A seller must verify that the purchaser's sales tax license or exemption certificate is current and valid at the time of the sale.

- (i) *Verifying a Colorado License or Certificate.* Except as provided in this rule, a seller must verify that the license or certificate is valid using the Department's online verification system. To verify that a license or certificate is current and valid, a seller can go online to [www.colorado.gov/revenueonline](http://www.colorado.gov/revenueonline) and follow the link to "Verify a License or Certificate." In lieu of verifying a purchaser's license or certificate through the Department's online verification system, the seller may inspect a physical copy of the license or certificate for completeness and ensure the license or certificate has not expired. If the seller relies on a physical copy of the license or certificate for verification, the seller must maintain a copy of the document for their records.
  - (ii) *Out-Of-State Purchasers.* A seller may accept from an out-of-state purchaser a resale license, exemption certificate, or other authorized documentation from the issuing state. The seller must maintain a copy of the document for their records. A seller may also have the out-of-state purchaser complete a Department-issued Exemption Certificate or Affidavit of Exempt Sale, or the Multistate Tax Commission's Exemption/Resale Certificate, and maintain the fully-completed document for their records.
  - (iii) *Recurring Business Transactions.* A seller who has verified that a purchaser has a current and valid license or certificate is not required to continue verifying the same license or certificate for subsequent purchases made prior to the expiration of the license or certificate, unless the seller has reason to believe that the purchaser no longer has a current and valid license or certificate. A seller that believes a purchaser no longer has a current or valid license or certificate must follow the procedures in paragraph (2)(c) of this rule. A seller must re-verify a purchaser's license or certificate during the first transaction following the expiration of the license or certificate.
- (b) *Sales to Exempt Organizations.* Sellers must consider whether the nature of goods or services sold is consistent with the purchaser's claim that the sale is exempt from sales or retailer's use taxes. Sellers must also verify that the purchase is made directly from the funds of the entity claiming the exemption from sales or use tax. However, a seller exercising due diligence is not required to verify the source of the funds if a charitable organizations purchases total less than \$250.
  - (i) *Sales to Charitable Organizations.* Goods or services that are reasonably used exclusively in the conduct of the organization's ordinary exempt functions and activities are eligible for exemption, pursuant to § 39-26-718(1)(a), C.R.S. For example, the sale of a diamond ring purchased on behalf of a tax-exempt church would not appear to be the purchase of a good used in the ordinary exempt functions of a church.
  - (ii) *Sales to Governmental Entities.* Goods or services that are reasonably used in a governmental capacity are eligible for exemption, pursuant to § 39-26-704(1), C.R.S. For example, the sale of a single set or multiple sets of golf clubs to an employee of the Department of Revenue would not appear to be the purchase of goods used in the Department's governmental capacity.
- (c) If evidence readily discernible to the seller at the time of the sale provides reason to doubt the purchaser's eligibility for the exemption being claimed, the seller must obtain and retain sufficient information and documentation from the purchaser to resolve the doubt or the seller must collect the applicable tax.

- (i) *Resolving Doubts About Purchaser Eligibility for Exemption.* A seller has the burden of demonstrating to the Department that the purchaser was eligible for exemption. In resolving any doubt about a purchaser's eligibility for exemption, a seller must either comply with the requirements of this paragraph 2(c)(i) or collect the tax.
    - (A) *Sales to Wholesalers.* The seller must reasonably conclude that the goods sold are reasonably for resale in the course of purchaser's ordinary business. For example, a florist cannot make a tax-exempt purchase of a mattress as a sale for resale, as it is not reasonable to conclude a florist would sell a mattress in the course of a florists' ordinary business.
    - (B) *Documentation.* Sellers must keep sufficient information and documentation that demonstrate the seller's due diligence to verify the purchaser's claim for exemption.
      - (I) A seller must have the purchaser fully complete a Department-issued Affidavit of Exempt Sale, or
      - (II) Alternatively, a seller may independently record the following information; the name and address of the purchaser, purchaser's license or certificate number, a copy of the license or certificate if applicable, the date of sale, the purchase price, a description of the goods or services sold, a description of the purchaser's business, and the name on the credit card or check used by the purchaser to pay for the transaction.
  - (ii) *Collecting Tax if Doubts About the Purchaser's Eligibility for Exemption Cannot be Resolved.* A seller who has not verified the purchaser's eligibility for exemption in accordance with paragraph (2)(c)(i) of this rule must collect the applicable tax at the time of sale and issue the purchaser a receipt pursuant to § 39-26-102(22), C.R.S. The purchaser may then file a claim for refund with the Department.
- (3) **Sellers Requirements Under Audit.** If the Department finds the records of a seller do not demonstrate compliance with the requirements of this rule, the Department shall allow the seller 120 days to collect information sufficient to comply with the requirements of this rule. The Department may extend the 120-day period by 60 days for good cause shown.

Cross References:

1. How to Document Sales to Retailers, Tax-Exempt Organizations and Direct Pay Permit Holders, FYI Sales No. 1
2. For additional information on exempt sales for resale, see §39-26-102(19), C.R.S.
3. For additional information on exemptions for Charitable Organizations, see §39-26-718, C.R.S.
4. For additional information on Governmental Purchases Exemptions, see FYI Sales No. 63, §39-26-704, C.R.S.
5. For additional information on Disputed Transactions, See §§ 39-26-102.22 and 703 C.R.S.
6. For additional information on out-of-state exemption documents, see §24-60-1301, C.R.S.

7. The Colorado Department of Revenue Affidavit of Exempt Sale is form DR 5002.
8. *Sec. Life & Accident Co. v. Heckers*, 177 Colo. 455, 495 P.2d 225 (1972).

**Regulation 39-26-105.1(c) [Repealed eff. 07/30/2018]**

**Regulation 26-105.2.**

When an item of tangible personal property is rented with a warranty for the maintenance or servicing of the property for a given period of time, the sales tax will be imposed, collected, and paid upon the rentals payable, including the value of the warranty, if the rental is subject to the sales tax under the provisions of C.R.S. 1973, 39-26-102(23). Lessors of tangible personal property providing a warranty for the maintenance or servicing of the rental property may apply to the executive director to exclude from the rental price the average value of the cost of service included within the warranty. If written permission is granted by the executive director, the sales tax will apply to the rental price of such article of tangible personal property, exclusive of that part of the rental price which is assignable to the anticipated cost of repair labor included within the warranty.

If a separate warranty or service contract is purchased, the sales price of the warranty or service contract is not subject to a sales or use tax. However, the individual providing the warranty or service must pay sales or use tax on the purchase price of tangible personal property used to provide such service when the property is purchased or is taken from inventory for this purpose. When a vendor or lessor contracts with another unrelated entity to provide the warranty service, he shall exclude the cost of the warranty contract from the sales price subject to sales tax; in this situation the individual providing the warranty is liable for payment of tax as provided above.

**Regulations Governing Certification of Address Databases and Designation of Third-party Verifiers**

**RULE 39-26-105.3 - ELECTRONIC ADDRESS DATABASES**

**Basis and Purpose**

The basis for this rule is §§ 39-21-112, 39-26-105.3, and 39-26-204.5, C.R.S. The purpose of this rule is to establish procedures and requirements for the testing and certification of electronic address databases and to establish the criteria retailers must meet to be held harmless for tax underpayments resulting from use of a certified database.

- (1) **Definitions.** As used in this rule, unless context otherwise requires:
- (a) “Database” means a system that specifies the taxing jurisdictions that have the authority to impose a tax on purchases made at each address in Colorado. A “System” may consist of one or more software applications and/or other electronic processes.
  - (b) “Department” means the Department of Revenue.
  - (c) “Local Tax Jurisdiction” includes every governmental entity and special district located within Colorado, other than the State of Colorado, that has the authority to levy a sales and/or use tax
  - (d) “Provider” means a person, company, or other entity that owns and/or operates a Database.

- (e) “Verifier” means a person, company, or entity designated by the Department to conduct testing of Databases and verify that said Databases satisfy the requirements of § 39-26-105.3, C.R.S. and this rule. In such case that the Department directly conducts testing and verification, the term “Verifier” means the Department.

(2) **Procedure for Certification.**

- (a) A Provider may request the Department certify its Database by submitting an application in accordance with Department instructions. The Department may request information in support of an application including, but not limited to, the Provider’s name (including trade name) and address; the name, address, telephone number, and email address of the person representing the Provider to whom the Department shall direct communications; and sufficient information so as to specifically identify the Database and System, including any version number or similar designation.
- (b) Upon receipt of an application and any additional information the Department requests, the Department shall direct the Verifier to initiate the testing process prescribed in subsection (3) of this rule. If the Database satisfies the requirements set forth in § 39-26-105.3, C.R.S. and this rule, the Department shall issue written certification to the Provider stating that the Database is certified subject to the limitations and conditions set forth in § 39-26-105.3, C.R.S. and this rule.
- (c) *Effective Date / Expiration Date.* The certification shall be effective for three years, beginning with the date the Department issues notice of certification. The certification shall expire automatically three years from the effective date. A Provider may, prior to the expiration of certification, apply for recertification. The process for recertification shall be the same as the process for initial certification.
- (d) *List of Certified Databases.* For each Database that has been certified pursuant to this rule, the Department shall list on its web site:
  - (i) the Provider’s name, website address, and contact information;
  - (ii) the Database and System receiving certification;
  - (iii) the effective date of the certification; and
  - (iv) the expiration date for the certification or, in the case of revocation under subsection (5) of this rule, the date such revocation is effective.
- (e) *Regulations Subject to Modification.* The Department may amend this rule. Any Provider owning and/or operating a certified Database may be required to comply with any additional requirements included in the amended rule including, but not limited to retesting pursuant to any revised testing requirements.

(3) **Testing and Verification.**

- (a) Upon the direction of the Department as described in paragraph (2)(b) of this rule, the Verifier shall commence the testing and verification process as set forth in this subsection (3). In execution of the testing and verification process the Verifier shall:
  - (i) create a test sample and answer key for use in evaluating the accuracy of the Provider’s Database;
  - (ii) transmit the test sample electronically to the applying Provider;

- (iii) receive the Database responses for the test sample from the Provider; and
  - (iv) evaluate the submitted responses for accuracy and produce a report.
- (b) *Creation of Test Sample.* The Verifier shall create the test sample in accordance with all requirements of this paragraph (b).
  - (i) The test sample shall consist of not less than 2000 physical addresses located in Colorado. The addresses in the test sample shall be selected at random from the full population of business addresses in with active sales tax licenses according to Department records. The Department shall review and confirm the statistical validity of the test sample prior to the administration of the test. The determination of the statistical validity of the test sample shall be within the sole discretion of the Department.
  - (ii) The Verifier may supplement the test with additional addresses. The Verifier may solicit such supplemental addresses from Local Tax Jurisdictions.
  - (iii) In addition to the test sample, the Verifier shall create a key that specifies all state and local jurisdictions authorized to impose a tax on purchases made at each address included in the test sample. Such key must be created using information from Department records and, where deemed necessary by the Verifier, may be further verified with local treasurer and assessor records.
  - (iv) The Verifier shall provide the test sample and the accompanying key to each Local Tax Jurisdiction. The Local Tax Jurisdiction shall have 30 days to verify the accuracy of the key and dispute any information contained therein. If the Local Tax Jurisdiction disputes any of the information contained in the key, such dispute will be resolved by reference to the applicable treasurer or assessor records.
- (c) The Verifier shall transmit an electronic copy of the test sample to the applying Provider. Using its Database, the Provider shall, with respect to purchases made at each address included in the test sample, identify all jurisdictions with the authority to impose a tax. The Provider shall submit, in the form and within the time prescribed by the Verifier, a list of all jurisdictions so identified with respect to each address in the test sample.
- (d) Upon receipt of the Provider's submission, the Verifier shall evaluate it for accuracy and prepare a report detailing the Verifier's findings.
  - (i) A Provider's response for each address in the test sample shall be deemed correct only if it properly identifies all jurisdictions with the authority to impose a tax on purchases made at the address, including the state and all Local Tax Jurisdictions.
  - (ii) The Verifier will communicate to the Provider each response the Verifier determines is incorrect, the jurisdiction that was omitted or incorrectly identified in the response, and the correct jurisdictions for the address. The Provider may challenge the Verifier's determination of incorrectness with respect to any address. In the event of a challenge, the Verifier shall contact the relevant Local Tax Jurisdiction(s) to verify the jurisdictions authorized to impose a tax on purchases made at the address. Disputes between or among Local Tax Jurisdictions regarding the location of an address shall be resolved by said jurisdictions.



- (iii) After evaluating the Database's responses and resolving any challenges made by the Provider, the Verifier shall prepare a report detailing the test and the test results, and provide the report to the Department. The report such information as the Department requires, which may include, but is not limited to: the Verifier's name and contact information; the Provider's name and contact information; information sufficient to identify the Database and System tested, including any version number or similar designation; the date(s) testing was conducted; the test sample and key; and the test results.
- (4) **Certification Criteria.** A Database must satisfy the certification criteria set forth below in order to receive and retain certification.
  - (a) *Accuracy.* A Database must produce correct and complete responses for at least 95% of the addresses included in the test sample in order to receive certification.
  - (b) *Access for Local Tax Jurisdictions Verification.* The Department shall notify Local Tax Jurisdictions when certification has been granted for a Database. Upon certification, any Provider that owns or operates a certified Database must allow each Local Tax Jurisdiction readily accessible means of determining whether the Database correctly specifies the jurisdictions with the authority to impose a tax at a given address. The Provider shall work cooperatively with the Department and Local Tax Jurisdictions to facilitate checking of individual addresses or groups of addresses against the Database.
  - (c) *Prompt Updating of Information.* A Provider shall have in place a process for regularly updating its Database and promptly correcting any errors and omissions. Updates must be made at least quarterly, and the Provider must make reasonable efforts to include in each update the correction of any error or omission about which it received notification in the ninety days preceding the update. The Provider must correct any error or omission in the Database about which it receives notification no later than 120 days following the notification. If a Local Tax Jurisdiction determines that the Database does not completely and correctly identify the jurisdictions authorized to impose a tax at a given address, the Local Tax Jurisdiction may notify the Department of the error or omission. The Department shall promptly notify the Provider of any error or omission that it or any Local Tax Jurisdiction finds with respect to the Database.
  - (d) *Version Designation - Record Retention.* The Provider of any certified Database must retain a complete copy of each iteration of the Database for no less than four years from the date that such iteration was replaced by an updated version.
  - (e) *Requirement to Recertify Prior to Expiration.* If the Department identifies numerous errors or omissions in the Database prior to the expiration of the certification, the Department may require the Provider to complete a recertification process. The recertification process shall consist of the testing and verification process outlined in subsection (3) of this rule.
- (5) **Denial or Revocation of Certification.** The Department may deny a request for certification or revoke the certification of a Database for just cause. The Department may reassess at any time whether the Database should continue to be certified.
  - (a) "Just cause" for denial or revocation of certification shall include, without limitation, that:
    - (i) the Database is not in compliance with requirements established by § 39-26-105.3 and this rule;
    - (ii) the Provider's application contains a material misstatement(s);

- (iii) the Database fails, during the testing process, to produce complete and correct responses for at least 95% of the addresses in the test sample;
  - (iv) the Provider fails to maintain the accuracy of the Database; or
  - (v) the Provider failed to properly and timely notify its users, pursuant to paragraph (d) of this subsection (5), of a prior revocation of certification.
- (b) Any denial or revocation of certification shall be made in accordance with § 24-4-104, C.R.S.
- (c) In the event of revocation, the Department shall, in accordance with subparagraph (iv) of paragraph (a) of subsection (2) of this rule, update its website to reflect the effective date of the revocation and the date on which such update was made.
- (d) In the event of revocation, the Provider shall provide prompt and effective notice to users of its Database that it has been decertified. Such notification shall be made no later than five business days after the Provider receives notice of revocation from the Department.

**(6) Verifiers.**

- (a) *Designation.* The Department has the authority to designate one or more persons, companies, or entities to serve as Verifiers. The designations shall be based on the sole and exclusive judgment of the Department regarding the person's, company's, or entity's expertise, experience, and performance of duties set forth herein. The Department has the authority to withdraw its designation of a Verifier at any time if, in the Department's sole and exclusive judgment, the Verifier should not be so designated.
- (b) *Fee of Verifier.* The Verifier may charge a Provider a reasonable fee, in light of its costs and reasonable profit, for work performed in connection with this rule. In no event is the Department responsible to the Verifier or Provider for payment of such fee.

**(7) Retailers Held Harmless.**

- (a) A retailer that properly uses and demonstrably relies upon a certified Database to determine the jurisdiction(s) to which tax is due shall be held harmless for any underpayment of tax, charge, or fee liability that results solely from an error or omission in the Database. In order to be held harmless under §§ 39-26-105.3 and 204.5, C.R.S. and this rule with respect to any particular sale, a retailer must collect, retain, and produce, upon request, documentation sufficient to demonstrate proper use of and reliance on a certified Database at the time of the sale.
  - (i) *Proper Use.* A retailer shall be held harmless only when an underpayment of tax results solely from an error or omission in a certified Database. If a retailer queries a certified Database for an address that is either incomplete or contain errors, any underpayment with respect thereto shall not be deemed the result solely of an error or omission in the Database. In such case, the retailer that improperly used the Database shall not be held harmless for any underpayment of tax, charge, or fee.

- (ii) *Demonstrable Reliance.*
  - (A) If a retailer contracts with a Provider of a certified Database for a “hosted” or “on premise” solution that integrates Database utilization into the retailer’s billing system, the contract in effect at the time of the sale will demonstrate the retailer’s reliance on the certified Database with respect to the sale.
  - (B) If a retailer has no such contract for integrated Database utilization, but instead accesses the Database remotely for occasional use, the retailer must collect and retain documentation sufficient to demonstrate such use. Such documentation must reflect the physical address in question, the jurisdiction(s) identified by the Database for the address, and the date that such information was accessed. A screen print of the Database response will be sufficient to document reliance so long as the screen print reflects the address, the jurisdiction(s), and the date of use.
- (b) *Held Harmless.* If a retailer is held harmless under §§ 39-26-105.3 or 204.5, C.R.S. and this rule, the retailer will not be held liable for any underpayment of tax, charge, or fee liability that results solely from an error or omission in a certified Database. In the event that an assessment is issued for such an underpayment, the Department shall, upon receipt of sufficient documentation to demonstrate both proper use and reliance, adjust its records to cancel such assessment.
- (c) *Effect of Revocation or Expiration of Certification.* A taxpayer shall not be held harmless for use of a Database after the expiration or revocation of certification. Unless the taxpayer is also the Database Provider, a revocation of certification shall not affect the right of the taxpayer to be held harmless, pursuant to §§ 39-26-105.3 or 204.5, C.R.S. and this rule, for sales and use tax liabilities for transactions that occurred prior to the effective date of the revocation. However, a retailer who is also the Database Provider shall not be held harmless for sales or use taxes incurred prior to the effective date of the revocation if the Department determines that the Provider has knowingly or recklessly disregarded the requirements of this rule.

Cross Reference(s):

- 1. § 39-26-204.5, C.R.S.
- 2. § 24-4-104, C.R.S.

**REGULATION 39-26-105.5 [Repealed eff. 08/14/2018]**

**Regulation 26-106 SEPARATELY STATED SALES TAX / EXCESS TAX**

- (1) **General Rule.** A retailer must separately state the sales tax or retailer’s use tax charged to the buyer. If the retailer issues buyer a receipt, invoice, or other document setting forth the purchase price, the retailer must separately state the tax on such document. If the retailer does not issue a document that sets forth the purchase price, then the retailer must disclose the tax of each item on signage clearly visible to the buyer.

- (a) *Separately Stated.* Tax is separately stated if the amount of tax is disclosed on the customer's invoice, contract, or on signage clearly visible to buyer at the time of purchase. The amount of tax for each item must be separately stated as a dollar amount. It is not sufficient to state the tax rate on such invoice or other document. If more than one state-administered tax is charged to the buyer, retailer may either separately state each tax amount or state the total tax amount.
- (b) This rule applies only to state-administered local jurisdictions, and does not apply to home rule cities and counties.
- (c) *Example.*
  - (i) A retailer charges buyer state sales tax (2.9%), state-administered city sales tax (1%), state-administered county sales tax (.5%), and special district sales taxes sales tax (1%). The retailer lists the purchase price of the taxable good as \$10. The retailer, as a business practice, does not generally provide an invoice to buyers, and, thus, must separately state on clearly visible signage to the buyer at the point of sale that the total dollar amount of the sale includes sales tax of \$.51. The retailer must show the applicable tax for each specific item. Retailer cannot state the tax amount as a percentage. For example, a retailer cannot state on signage or on the invoice that the tax paid is a stated percentage (e.g., 5.4%).
  - (ii) A retailer that generally provides an invoice to buyers must separately state on the invoice each individual or the total sales tax due.
- (2) **Exceptions.** The general rule does not apply to retailers who sell malt, vinous, or spirituous liquor by the drink and elect to include the tax in the price or retailers selling goods by coin-operated vending machines. Retailers who sell goods by vending machines that are not coin-operated (such as vending machines that exclusively accept credit card payments) are not exempted from the general rule and must provide an invoice separately stating the applicable sales tax. See, §39-26-106(2)(b), C.R.S.
- (3) **Excess Tax.** Tax collected on sales of more than the minimum taxable amount will usually result in the collection of tax in excess of the tax rate. For example, the state sales tax on a purchase of \$3.00 is \$.087, but the retailer will collect \$.09. Any excess tax collected during the month must be included in the total amount of the sales tax for which the retailer is required to account. If a retailer operates more than one store within Colorado, the retailer cannot offset any under collection of sales tax at a store against an over collection of sales tax at another store. In addition, a retailer cannot offset any under collection of sales tax in one month against an over collection of sales tax in another month. However, this excess tax collected as a result of rounding may offset the under collection of tax due to the sale of individual items priced at less than seventeen cents.

Cross Reference(s):

- 1. A retailer cannot directly or indirectly state that the tax, or part of the tax, will be assumed, absorbed, or refunded or that it will not be added to the purchase price. See, §39-26-108, C.R.S.
- 2. For additional information on the requirement of the vendor to pay sales tax on purchases of less than seventeen cents see Department Rule 39-26-105.

**Regulation 26-106.2(a).** [Repealed eff. 05/30/2014]

**Regulation 26-106.2(b).**

A vendor who sells malt, vinous or spirituous liquors by the drink shall, at the time of making his first retail sale of such beverage, elect either of the following methods to impose the tax:

- (a) The tax may be included in fee price of the drink or
- (b) The tax may be separately stated and added to the price of the drink.

The vendor may elect to operate under method (a) for drinks sold at the bar and method (b) for drinks sold at tables, or he may elect to operate under the same method for drinks sold at the bar and tables. Once having made the election he must continue to collect the tax in the manner elected, unless permission to change the election is first obtained from the department of revenue.

If the vendor elects to use different methods on bar and table sales, he must keep adequate records. If the vendor elects to include the tax in the price of the drink, the following method must be used to determine taxable sales: exempt sales are deducted from gross sales and the difference is divided by the total of one hundred percent plus the applicable sales tax percentage.

Vendors dispensing liquor, wine or beer by the drink, who purchase ingredients which they use in mixing the drink are not required to pay sales tax on the purchase of such ingredients.

**Regulation 39-26-106.2(b)(c)**

Fermented malt beverages and malt, vinous or spirituous liquors are subject to sales tax. (See Regulation 26-106.2(b).)

**Regulation 39-26-106.3. TAX RATE – TEMPORARY REDUCED RATE ON COMMERCIAL TRUCKS OVER 26,000 GVWR SUBJECT TO EXCESS STATE REVENUES [Repealed eff. 03/03/2014]**

**Regulation 39-26-108. ABSORPTION OF TAX [Repealed eff. 03/03/2014]**

**Rule 39-26-109. Sales Tax Filing Schedules**

**Basis and Purpose**

The basis for this rule is §§ 39-21-112(1), 39-26-105 and 109, C.R.S. The purpose of this rule is to prescribe sales tax filing schedules and conditions for the modification thereof.

- (1) **General Rule.** Retailers shall file returns and remit tax to the Department in accordance with the filing schedules and due dates prescribed by this rule.
- (2) **Standard Filing Schedules.**
  - (a) A retailer must file returns and remit sales tax on a monthly basis unless the Department has granted the retailer approval to file returns and remit sales tax on a less frequent basis. Unless permission is denied or revoked pursuant to paragraph (3) or (4) of this rule, the Department shall permit the retailer to file returns and remit sales tax on a basis less frequent than monthly if the retailer's average monthly Colorado sales tax collection is less than three hundred dollars.
  - (b) On the application for a sales tax license, a retailer must indicate the amount of its estimated monthly sales tax collection. The retailer's required filing frequency shall be determined initially on the basis of this estimate.

- (I) If the retailer's estimated monthly sales tax collection is three hundred dollars or more, the retailer shall file returns and remit tax on a monthly basis.
  - (II) If the retailer's estimated monthly tax collection is less than three hundred dollars, the retailer shall file returns and remit tax on a quarterly basis or as provided in paragraph (3) of this rule.
- (3) **Alternate Filing Schedules.** A retailer may request a filing schedule other than monthly or quarterly as provided in this paragraph (3). The Department shall grant approval for an alternate filing schedule only if such alternate schedule will not jeopardize the collection of tax. The Department shall notify a retailer of the approval or denial of any request for an alternate filing schedule submitted pursuant to this rule.
  - (a) If a retailer's average or estimated monthly sales tax collection is \$15 or less and filing sales tax returns on a monthly or quarterly basis would impose unnecessary hardship, the retailer may request permission to file returns and remit tax on an annual basis. The retailer may make such request by checking the appropriate box of the retailer's initial sales tax application or by submitting such request to the Department in writing.
  - (b) If a retailer is engaged in a seasonal business (a business that the retailer does not operate in Colorado during certain months of the year), the retailer may request permission to file returns and remit tax only for the months of the year that the business operates. The request shall indicate the months the retailer expects to operate the business in Colorado. The retailer may make such request by checking the appropriate boxes of the retailer's initial sales tax application or by submitting such request to the Department in writing. The retailer must immediately notify the Department if the retailer operates its business in any month for which the retailer's request indicated the retailer would not operate the business.
  - (c) If a retailer regularly employs accounting methods involving reporting periods other than calendar months (such as thirteen four-week periods over the course of the year), the retailer may request permission to file returns and remit tax on a filing schedule consistent with such accounting methods. Any retailer requesting such permission must make such request to the Department in writing.
- (4) **Changes to Filing Schedules.**
  - (a) For any retailer for which the Department has not approved an alternate filing schedule pursuant to paragraphs (2)(b) or (2)(c) of this rule, the Department shall, on an annual basis, calculate the retailer's average monthly sales tax collection and adjust the retailer's filing schedule to increase the frequency of filing as necessary pursuant to this paragraph (4)(a). Such adjustments shall be made effective January 1. The Department shall not make any automatic adjustment to a retailer's filing schedule to decrease the frequency of filing, but a retailer may, pursuant to paragraph (3)(b) of this rule, request a change to their filing schedule.
    - (I) If a retailer's average monthly sales tax collection is three hundred dollars or more, the Department shall require the retailer to file returns and remit tax on a monthly basis.
    - (II) If a retailer's average monthly sales tax collection is less than three hundred dollars, but more than fifteen dollars, the Department shall require the retailer to file returns and remit tax on a quarterly basis.

- (b) A retailer may submit a written request to the Department to change the retailer's filing schedule. The Department shall not approve any requested filing schedule that would jeopardize the collection of tax or any request made by a retailer that is delinquent in the filing of any required sales tax return or the remittance of any sales tax.
  - (I) The Department shall not approve a retailer's request for a quarterly filing schedule if the retailer's average monthly sales tax collection exceeds three hundred dollars.
  - (II) The Department shall not approve a retailer's request for an annual filing schedule if the retailer's average monthly sales tax collection exceeds fifteen dollars.
- (c) If a retailer becomes delinquent in the filing of any required sales tax returns or the remittance of any sales tax, the Department may revoke any prior approval of a quarterly or alternate filing schedule. Upon such revocation the retailer will be required to file returns and remit tax on a monthly basis.
- (d) The Department shall notify a retailer, in writing, of any change made in accordance with this paragraph (4) to the retailer's filing schedule along with the effective date of any such change.
- (5) **Due Dates.** Sales tax returns and payments of tax reported thereon are due the twentieth day following the close of the tax period. If the twentieth day following the close of the tax period falls on a Saturday, Sunday, or legal holiday, the due date shall be the next business day.
- (6) **Wholesalers.** Wholesalers that make no retail sales must file returns on an annual basis to report their gross sales and allowable subtractions therefrom. A wholesaler that makes retail sales in addition to wholesale sales is subject to the requirements of this rule and must file returns and remit tax monthly or quarterly, as applicable, unless the wholesaler has received permission to file less frequently.

Cross references

- 1. See § 39-21-120(3), C.R.S. for due dates that fall on Saturdays, Sundays, or legal holidays.
- 2. Colorado Sales Tax Withholding Account Application (CR 0100AP)

**Regulation 26-110.**

A retailer required to collect tax imposed under this section who is doing business in two or more locations within the state of Colorado may:

- (1) file a separate sales tax return for each business location within the state of Colorado, or
- (2) file a consolidated sales tax return covering all business locations within the state of Colorado. If consolidated sales tax returns are filed, the retailer must complete and return all accompanying supplemental schedules.

Undercollections and overcollections may not be offset. See regulation 26-105.1(a).

**Regulation 26-111.**

This regulation deals only with credit sales. (Cash sales must be reported currently.)

For the purpose of this regulation, a “credit sale” is a retail sale that is created by a time payment plan, a conditional sale, or a sale secured by a chattel mortgage, whereby the remittance of the full selling price is to be paid at a future date.

If the retailer elects to report the credit sales on the cash basis, he must keep adequate and complete records to show separately the sales price of the tangible personal property, the sales tax applicable to each credit sale, and any interest, insurance or carrying charges that have been added to the sale.

When the retailer reports the credit sale on the accrual basis, he shall include the selling price in the return for the month in which the sale was made and remit the entire applicable sales tax.

The retailer on the accrual basis is allowed a deduction for bad debts on the taxable portion of worthless credit sales. No deduction for bad debts is allowable when the retailer is reporting his taxable sales on the cash basis.

When a repossessed article is resold, the transaction constitutes an entirely new, separate and distinct sale upon which the sales tax shall be collected in the regular manner.

On the sale of a motor vehicle, C.R.S. 1973, 39-26-113 requires that the retailer collect and remit all the applicable sales tax on the accrual basis. No refund or credit for sales tax paid is allowed on the repossession of a motor vehicle.

A cash discount allowed for payment on or before a given date is not an allowable adjustment to the selling price in determining taxable sales.

#### **Regulation 26-113.**

When applying for registration, title or license, every new owner of a vehicle or mobile home must produce either (1) a receipt from the department showing that the sales or use tax has been paid, or (2) a receipt on forms provided by the department showing that the vehicle was purchased from a Colorado licensed motor vehicle dealer and that the dealer has collected no sales tax or use tax is due.

The collection of sales or use tax as provided in this section does not apply to the titling, licensing or registration of motor vehicles transferred by gift or operation of law or where the transaction is otherwise exempt from the imposition of sales or use tax. See Regulation 26-102.10 for bona fide gifts.

#### **Regulation 39-26-113.5            REFUNDS OF SALES AND USE TAX FOR VEHICLES USED IN INTERSTATE COMMERCE**

##### **(1)    Qualification Requirements.**

- (a)    The truck tractor or semitrailer giving rise to the refund must be model year 2010 or newer with a gross vehicle weight rating of fifty-four thousand pounds or greater, and must be purchased on or after July 1, 2011.
- (b)    Only truck tractors or semitrailers that were purchased or first stored or used in the year when the model year of such truck tractor or semitrailer was sold as new are eligible for the refund allowed by this section.



- (2)     **Refund Calculation.**

  - (a)     The percentage of tax to be refunded will be computed by dividing the non-Colorado miles by the total miles as used in the computation of the specific ownership tax. (Example: If the total miles driven is 10,000 with 8,000 of those Colorado miles and 2,000 non-Colorado miles, the refund percentage will be 20%.) This percentage establishes the amount of the refund, which shall be paid in three equal installments.
- (3)     **Prioritization of Claims.**

  - (a)     Claims will be eligible for issue based on the date they are received by the Department. Claims will be prioritized based on the date received. Once a claim has been filed, if it is not paid in the year in which it was filed, its priority will carry over to the next year. Therefore, the taxpayer need not file another claim in subsequent years. However, claims for leases must be filed for each of the 3 years as stated in paragraph (5).
- (4)     **Remaining Balance to be Refunded.**

  - (a)     The annual funds available for refund is limited by §42-1-225, C.R.S. Claims will be honored based on the prioritization stated in paragraph (3), above. Claims filed after the fund has been depleted will not receive a refund for that year, but may be for the year 2 and/or year 3 refund.
  - (b)     In the event that more than one claim is received on the same date and the amount available in the fund is less than the total amount of the claims, the earlier purchase date will be used to determine which refund claims will be issued.
- (5)     **Leases.**

  - (a)     A lease term must be for more than 3 years and must be entered into after July 1, 2011 to qualify for the refund. All leases entered into prior to July 1, 2011 are not eligible for this refund.
  - (b)     If the total sales tax is paid at the time the vehicle is leased, then the lessee may apply for a refund of the total tax paid and the refund will be calculated in the same manner listed in paragraph (2).
  - (c)     If the tax is included in the lease payments, the applicant must wait until the last payment has been made for that calendar year before a refund claim can be submitted. The refund will be calculated based on the amount of tax paid in the previous calendar year. A separate refund claim must be submitted for each of the 3 years that the refund is allowed under §39-26-113.5, C.R.S.
- (6)     **Application and Documentation Required to Qualify for the Refund.**

  - (a)     A taxpayer shall apply for the refund allowed by this section by filing a claim for refund after registering the vehicle and being assessed specific ownership tax at less than one hundred percent as noted in (2)(a).
  - (b)     For purchases in Colorado, a refund request must include a copy of the retail purchase agreement from the dealer, the standard sales tax receipt (DR 0024) and any other documentation the Department requests to validate the statutory requirements for the refund.

- (c) For purchases made outside of Colorado, a refund request must include a copy of the purchase agreement, a copy of the county registration and any other documentation the Department requests to validate the statutory requirements for the refund.
- (d) For leases, a refund request must include a copy of the lease agreement, documentation stating the term of lease, the taxes paid with each lease payment and any other documentation the Department requests to validate the statutory requirements for the refund.

**Regulation 26 - 116.**

(a) General.

It is the duty of every person engaged or continuing in business in this state, for the transaction of which a license is required under this Part 1, and the duty of every lessor and lessee of tangible personal property for use in this state, to keep adequate and complete records. Unless the department authorizes an alternate method of recordkeeping in writing, these records should show:

- (1) Gross receipts from sales, or rental payments from leases, of tangible personal property (including any services that are a part of the sale or lease) made in this state, irrespective of whether the seller or lessor regards the receipts to be taxable or nontaxable.
- (2) All deductions allowed by law and claimed in filing returns.
- (3) Total purchase price of all tangible personal property purchased for sale or consumption or lease in this state.

These records must include the normal books of account maintained by the ordinarily prudent businessman engaged in such business, together with all bills, receipts, invoices, cash register tapes, or other documents or original entry supporting the entries in the books of accounts together with all schedules or working papers used in connection with the preparation of tax returns.

The preceding provisions shall not apply to organizers of special sales events unless the organizer elects to obtain a sales tax license, file the sales tax return, and remit the sales tax as provided in C.R.S. 39-26-103(b.5)(IV)(B).

(b) Microfilm records.

Records may be microfilmed; however, microfilm reproductions of general books of account, such as cash books, journals, voucher registers, ledgers, etc., are not acceptable as original records. Where microfilm reproductions of supporting records are maintained, such as sales invoices, purchase invoices, credit memoranda, etc., the following conditions must be met:

- (1) Appropriate facilities are provided for preservation of the films for periods required.
- (2) Microfilm rolls are indexed cross referenced, and labeled to show beginning and ending numbers and to show beginning and ending alphabetical listing of documents included, and are systematically filed.
- (3) The taxpayer agrees to provide transcriptions of any information contained on microfilm which may be required for verification of tax liability.
- (4) Proper facilities are provided for the ready inspection and location of the particular records, including machines for viewing and copying the records.

A posting reference must be on each invoice. Credit memoranda must carry a reference to the document evidencing the original transaction. Documents necessary to support claimed exemptions from tax liability, such as bills of lading and purchase orders, must be maintained in an order by which they readily can be related to the transactions for which exemption is sought.

(c) Records prepared by automated data processing systems.

An ADP tax accounting system must be capable of producing visible and legible records for verification of taxpayer's tax liability.

(1) Recorded or reconstructible data.

ADP records must provide an opportunity to trace any transaction back to the original source or forward to a final total. If detail printouts are not made of transactions at the time they are processed, the systems must have the ability to reconstruct these transactions.

(2) General and Subsidiary Books of Account.

A general ledger, with source references, will be written out to coincide with financial reports for tax reporting periods. In cases where subsidiary ledgers are used to support the general ledger accounts, the subsidiary ledgers should also be written out periodically.

(3) Supporting Documents and Audit Trail.

The audit trail should be designed so that the details underlying the summary accounting data may be identified and made available to the Department upon request. The system should be so designed that supporting documents, such as sales invoices, purchase invoices, credit memoranda, etc., are readily available.

(4) Program Documentation.

A description of the ADP portion of the accounting system should be available. The statements and illustrations as to the scope of operations should be sufficiently detailed to indicate, (A) the application being performed, (B) the procedures employed in each application (which, for example, might be supported by flow charts, block diagrams or other satisfactory description of the input or output procedures), and (C) the controls used to insure accurate and reliable processing. Important changes, together with their effective dates, should be noted in order to preserve an accurate chronological record.

(d) Records Retention.

All records pertaining to transactions involving sales or use tax liability must be preserved for a period of not less than three years.

(e) Examination of Records.

All of the foregoing records must be made available for examination on request by the executive director or his authorized representatives.

**Regulation 26-117.1.**

Where any vendor sells his business he shall make a return and pay all taxes due within ten days of such sale. The purchaser of the business is liable for any unpaid tax due on sales made by his predecessor, including tax on outstanding accounts on which sales tax has not been remitted. The purchaser is required to withhold a sufficient amount of the purchase money to cover any taxes due and unpaid until the vendor can provide proof any such taxes have been paid.

Sales tax shall be remitted by the purchaser on the price paid for tangible personal property, other than inventory, acquired with the purchase of business and for use or consumption in the operation of the business. The tax shall be based on the price paid for such chattels as are recorded in the bill of sale or purchase agreement and which constitute part of the total transaction at the time of sale or transfer. Where the transfer of ownership is a “package deal” in a lump sum transaction the sales tax shall be based on the book value set up by the purchaser for income tax depreciation purposes or, if no such value is established, the fair market value.

**Regulation 39-26-118(1)      SALES TAXES HELD IN TRUST**

A retailer who collects sales taxes from another shall hold such funds in trust on behalf of the State of Colorado. The Department presumes that a retailer who uses recognized accounting practices to account for such trust funds has met its fiduciary obligations as a trustee of such funds.

**Cross References:**

1. Officers of a corporation and members of a partnership or limited liability company may be liable for penalties for willfully failing to collect, account for, or remit sales and retailer's use taxes, or for willfully attempting to evade the payment of or defeat such taxes. §39-21-116.5, C.R.S.
2. See Department Rule 39-26-106 regarding accounting for over and under-collected trust fund taxes.

**Regulation 26-122.**

Persons subject to taxation under this article shall make all returns required by statute in such detail as the executive director may require, including any information necessary to carry out the purposes of this article.

**Regulation 26-125.**

(The statute of limitations does not apply when no return has been filed, see C.R.S. 1973, 39-21-107.)

**Regulation (39-) 26-202.**

The primary purpose of the “use tax” is to impose a tax upon the privilege of storing, using or consuming any tangible personal property purchased at retail. The “use tax” is complementary to the sales tax in those situations where a sales tax cannot, as a practical matter, be collected, or has not, for any reason, been collected in the course of the retail transaction. A sale by any licensed or unlicensed vendor to a user or consumer and not for resale is a retail sale.

The obligation for the payment of the tax is upon the user whether the tax is called a “sales” tax or a “use” tax.

The sales tax and the use tax stand as complements and together provide a uniform tax upon either the sales, storage, use or consumption of all tangible personal property and taxable services purchased at retail. The amount of the tax is measured by the purchase price of the property or service.

Where tangible personal property is traded or exchanged between unlicensed persons, the sales or use tax is based on the fair market value of each article. Each owes the tax on the fair market value of the tangible personal property he received in exchange, except for exchanges of motor vehicles governed by §39-26-704 (5), C.R.S.

The use to which property is put, in order to bring about imposition of the tax, is not necessarily actual and ultimate usage, but may be only such use as is made by the owner or purchaser in exercising control. Use shall be deemed sufficient for the imposition of the tax when the article purchased is actually used or made available for use after delivery is completed, as well as when keeping, storing, withdrawing from storage, moving, installing, or performing any other act by which dominion or control over the property is assumed by the purchaser.

“Consumption” means the act or process of consuming; the term includes waste, destruction, or using up.

**Regulation 26 - 204.1.**

Effective January 1, 1999, all entries on the consumer's use tax return must be rounded to the nearest dollar. Amounts less than fifty cents must be rounded down to zero cents and amounts from fifty to ninety-nine cents must be rounded to the nearest dollar. Rounding is required on the tax return only; books, records, and other consumer's use tax documents must reflect actual tax amounts.

**Retailer's Use Tax**

**Regulation 26 - 204.2.**

Effective January 1, 1999, all entries on the retailer's use tax return must be rounded to the nearest dollar. Amounts less than fifty cents must be rounded down to zero cents and amounts from fifty to ninety-nine must be rounded to the nearest dollar. Rounding is required on the tax return only; books, records, invoices and other retailer's use tax documents must reflect actual tax amounts.

**Any out-of-state retailer who is engaged in selling at retail and who does not maintain a location in this state, as specified in C.R.S. 39-26-102 (3)(a), shall impose, collect, and remit to the department, a “Retailer's Use Tax” on such sales, instead of collecting the retail sales tax provided in Part 1 of the Act. Such retailer, upon application, shall be issued a “Retailer's Use Tax License” which is issued without charge.**

Every outstate retailer who is doing business in this state is required to collect retailer's use tax from the purchaser regardless of whether title to the goods passes within or without this state, if the sale of tangible personal property is subject to taxation due to the storage, use or consumption of that property within this state.

All sales subject to the retailer's use tax must be reported on the forms supplied by this department, “Retailer's Use Tax Return”, subject to the provisions of Part 1 of this Act.

Any retailer collecting sales or use tax thereby becomes a trustee for any such tax collected and is responsible as an agent of the State of Colorado.

**Regulation 26 - 204.3. [Repealed eff. 06/14/2016]**

**Regulation 26 - 208.**

Persons in the business of leasing vehicles or mobile homes within this state must have a Sales/Store License and must collect and remit to the Department of Revenue the state sales tax, and RTD tax if applicable, and applicable local taxes imposed by those municipalities and counties for whom the state collects local sales tax.

**Regulation 26 - 210.**

The statute of limitations does not apply whenever a return required to be filed under this part 2 is not filed. Also see C.R.S. 39-21-107 and Dye Construction Co. v. Dolan, 41 Colo. App. 293, 589 P.2d 497 (1978).

(The statute of limitations does not apply when no return has been filed, see C.R.S. 1973, 39-21-107.)

**Regulation 39-26-501(3)      STATE FISCAL YEAR [Repealed eff. 03/03/2014]**

**Regulation 39-26-502   SALES AND USE TAX REFUND FOR POLLUTION CONTROL EQUIPMENT  
[Repealed eff. 03/03/2014]**

**Regulation 39-26-601(3)      STATE FISCAL YEAR [Repealed eff. 03/03/2014]**

**Regulation 39-26-602   SALES AND USE TAX REFUND FOR STATE SALES OR USE TAX PAID ON  
RESEARCH AND DEVELOPMENT PROPERTY      [Repealed eff. 03/03/2014]**

**Regulation 2-106(9)**

Form M 100 has been adopted by the Colorado Department of Revenue as the standard municipal sales and use tax reporting form. This form will be reviewed annually, and any business or home rule city, town, or city and county which collects its own tax will have the opportunity to comment on the proposed revisions. In the event an immediate revision to the form is needed, such revision may be made at any time, and any business or home rule city, town or city and county which collects its own tax will have the opportunity to comment on the proposed revision.

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**Regulation 39-26-703.1 [Repealed eff. 06/14/2016]**

**Regulation 39-26-703.2(c)**

- (1) Claims for refund shall be executed and filed with the department of revenue on forms furnished by the department and in accordance with the instructions accompanying such forms or appearing thereon.
- (2) "The refund claims shall be signed by the claimant or his authorized officer or employee."
- (3) The claim shall be supported by an affidavit of the contractor or subcontractor that the sales or use tax sought to be refunded has been paid, and that the tangible personal property so taxed has been "built in" to the structures owned and used by the tax-exempt entity, and shall indicate therein where the books and records and other substantiating evidence of payment of said tax are located, and where they may be examined by authorized representatives of the department of revenue.
- (4) The claim shall also be accompanied by a certificate of the architect, superintendent of construction, or other person who shall have personal, technical, and official knowledge that the property on which the tax has been paid and in fact been "built in" by the contractor in accordance with the specifications of the contract and in the amount required thereby.
- (5) Refunds will be made only on taxes paid by the contractor or the subcontractor within three years prior to the date the claim is filed with the department of revenue.
- (6) In order to properly verify the contents of a claim for refund, the department may require such other and additional information as may be deemed necessary before payment of the claim will be authorized.

**Regulation 39-26-703.2(e)**

If any vendor makes overpayment of the tax, or is entitled to a credit on his tax payments because of mistakes, errors or canceled sales, in lieu of filing a claim for refund, credit for the amount of overpayment may be taken by the vendor on a subsequent return; but if the vendor is no longer engaged in business, he should apply for a refund.

**Regulation (39-) 26-704.1**

There is no sales tax on sales to the United States government, and to the state of Colorado, or any department, institution, subdivision of the state or federal government, when purchased within its governmental capacities. To secure exemption from the sales tax, the order for the goods must be on a prescribed government form or purchase order and paid for directly to the seller by warrant or check drawn on governmental funds.



**Rule 39-26-704(1.5) Sales Tax Exemption for Housing Authorities**

**Basis and Purpose**

The basis for this rule is § 39-21-112(1), § 39-26-704(1.5), § 29-4-227, § 29-1-204.5, and § 29-4-507, C.R.S. The purpose of this rule is to establish guidelines for the sales and use tax exemption authorized by § 39-26-704(1.5), C.R.S., including the process for requesting exemption certificates and refunds for tax paid. To alleviate the administrative burden on housing authorities, an affidavit, as described in this rule, may be submitted in lieu of receipts for refund claims for state sales and use tax paid prior to September 30, 2016. Receipts are required for refunds of state sales and use tax paid after September 30, 2016 and for local sales tax paid after August 10, 2016. These refund claims requiring receipts are expected to be infrequent because, beginning August 10, 2016, exemption certificates will be available to prevent the payment of tax at the point of sale, thus reducing the burden on housing authorities. Receipts are required for refunds of all local sales taxes claimed because local sales taxes can often be exempted at the point of sale with a building permit, which would have been obtained for all projects prior to construction.

**(1) General Rule.**

- (a) *Exemption for Housing Authorities.* All sales to and all storage, use, or consumption of tangible personal property or otherwise taxable services by Housing Authorities are exempt from state, local, and special district sales and use taxes.
- (b) *Exemption for Qualifying Projects.* Beginning August 10, 2016, an exemption from state, local, and special district sales and use taxes is allowed to any Qualifying Entity for any Qualifying Project in the manner described in this rule. Only **state** sales and use taxes paid prior to August 10, 2016 are eligible to be refunded. Local sales and use taxes paid prior to August 10, 2016 are not eligible to be refunded. Eligible Qualifying Projects should obtain exemption certificates beginning August 10, 2016 in order to make purchases tax-free after that date. In the event, expected to be rare, that sales and use taxes are paid on or after August 10, 2016, refunds for all sales and use taxes paid will be made in accordance with subsection (3)(f) of this rule.

**(2) Definitions.**

- (a) “Authority” or “Housing Authority” means:
  - (i) A city housing authority as defined in § 29-4-203(1), C.R.S., or
  - (ii) A multijurisdictional housing authority established under § 29-1-204.5, C.R.S., or
  - (iii) A county housing authority as defined in § 29-4-502(1), C.R.S.
- (b) “Department” means the Department of Revenue.
- (c) “Qualifying Entity” means an entity that is *wholly or partially* owned by:
  - (i) A Housing Authority, or
  - (ii) An entity that is wholly owned by a Housing Authority, or
  - (iii) An entity of which a Housing Authority is the sole member.

- (d) “Qualifying Project” means a project, as defined in § 29-4-203(12), C.R.S., that is wholly owned by, leased to, or under construction by a Qualifying Entity. A Qualifying Project will involve capitalizable expenditures.

(3) **Sales and Use Tax Exemption for Qualifying Projects.**

- (a) The exemption for Qualifying Projects under paragraph (b) of subsection (1) of this rule applies only to tangible personal property and otherwise taxable services purchased, acquired, stored, used, or consumed for Qualifying Projects during the construction period determined under paragraph (b) of this subsection (3).
- (b) *Determination of Construction Period.* The exemption under paragraph (b) of subsection (1) of this rule applies only during the construction of a Qualifying Project. The Housing Authority shall determine and certify the beginning and ending dates for the construction of the Qualifying Project and the period of time defined thereby will be the construction period for the Qualifying Project.
- (c) *Determination of Low-Income Percentage.* The exemption allowed under paragraph (b) of subsection (1) of this rule is in proportion to the percentage of the project that is for occupancy by persons of low income. The Housing Authority shall determine and certify this percentage and such determination shall be presumed valid absent manifest error.
  - (i) With respect to the definition of “low income” used in the determination made under this paragraph (c), no manifest error exists where a Qualifying Entity uses a definition established by the United States Department of Housing and Urban Development, the Colorado Housing and Finance Authority, or any similar public lender for Qualifying Projects.
  - (ii) With respect to the calculation of the percentage of the project that is for occupancy by persons of low income made under this paragraph (c), no manifest error exists where the calculation by the Qualifying Entity is consistent with any such calculation made in accordance with rules prescribed by the United States Department of Housing and Urban Development, the Colorado Housing and Finance Authority, or any similar public lender for Qualifying Projects.
- (d) *Application for Exemption for Qualifying Projects.* Exemption certificates may be requested from the Department for any Qualifying Project to allow Qualifying Entities and contractors to make tax-free purchases for the Qualifying Project. The exemption certificate may be requested by the Qualifying Entity, the general contractor for the Qualifying Project, or both by completing and submitting the appropriate application. The application must be accompanied by a statement from the Housing Authority detailing the Authority’s ownership interest in the Qualifying Entity, certifying the percentage calculated under paragraph (c) of this subsection (3), and certifying the construction period determined under paragraph (b) of this subsection (3).
- (e) *Remittance of Tax for Mixed Use Qualifying Projects.* Qualifying Entities that own, lease, or construct Qualifying Projects for which an exemption certificate is issued under paragraph (d) of this subsection (3), and for which the percentage calculated under paragraph (c) of this subsection (3) is less than 100% periodically must file sales tax returns and remit payment of the sales tax for the percentage of the Qualifying Project that is not exempt.
  - (i) Except as provided in subparagraph (ii) of this paragraph (e), such filing and payment shall be made at least quarterly and shall be made in accordance with all rules governing the filing and payment of sales tax generally.

- (ii) If the aggregate annual sales or use tax a Qualifying Entity must remit under this paragraph (e) is less than five thousand dollars, the Qualifying Entity may request from the executive director and the executive director may grant permission to file and remit sales tax under this paragraph (e) on an annual filing basis.
- (f) *Refund Claims for Qualifying Projects.* A Qualifying Entity that owns, leases, or constructs a Qualifying Project may, subject to the percentage determined under paragraph (c) of this subsection (3), submit a refund claim for sales and use taxes paid.
  - (i) A refund claim for a Qualifying Project must be submitted by the Qualifying Entity, not by a contractor performing work for the Qualifying Project.
  - (ii) Any refund claim submitted under this paragraph (f) must meet the following requirements:
    - (A) The refund claim must be submitted on the appropriate Departmental form ("Claim for Refund of Tax Paid to Vendors").
    - (B) The refund claim must be accompanied by a statement from the Housing Authority certifying:
      - (I) The Housing Authority's place in the ownership structure of the Qualifying Entity, and
      - (II) The percentage determined under paragraph (c) of this subsection (3).
    - (C) In the case of state sales or use taxes paid prior to September 30, 2016, the refund claim must be accompanied by an affidavit, signed under penalty of perjury by the Housing Authority, affirming that:
      - (I) The refund claim is for sales or use tax that actually was paid to vendors or was paid directly to the Department, and
      - (II) The amount of the claim includes only Colorado state sales or use tax and not any local or special district taxes.
    - (D) In the case of local and special district sales and use taxes paid on or after August 10, 2016 or state sales and use taxes paid on or after September 30, 2016, the refund claim must be accompanied by all necessary documentation, including receipts or invoices, required under Department rules, guidance, and instructions for refund claims generally.

**Cross Reference(s):**

- 1. FYI Income 90.
- 2. Form DR 0137B and associated instructions.

**Regulation 39-26-704.2**

- (1) All sales which the state of Colorado is prohibited from taxing under the constitution or laws of the United States or the state of Colorado are exempt, including sales to ambassadors, consuls, and their employees who are citizens of the nation they are representing.

- (2) Sales involving interstate commerce are exempt only in cases where the tax would be unconstitutional.
- (3) Sales of tangible personal property located within this state at the time of sale and delivered within this state are taxable, irrespective of the ultimate destination of the property sold, or where the parties to the contract of sale are located, or where the contract was made or accepted or the funds paid.
- (4) Sales of tangible personal property located within this state at the time of sale and delivered to the purchaser by the vendor or by common carrier to a destination outside this state for use outside this state are not taxable. Vendor's shipping records, bills of lading, or other proof satisfactory to the executive director must be retained to substantiate any exemption allowed for such sales in interstate commerce. On single sales of tangible personal property in excess of \$25,000.00, the purchaser shall execute and the vendor shall furnish the department "A Certificate of Out of State Sale" on forms furnished by the department.
- (5) Sales of merchandise ordered for delivery in this state are not necessarily exempt, even though the merchandise may be shipped from outside this state directly to the purchaser or indirectly through the vendor.
- (6) All sales to railroads, except as provided in C.R.S. 1973, 39-26-710(1)(a) and to other common carriers doing an interstate business, to telephone and telegraph companies, and to all other agencies engaged in interstate commerce are taxable in the same manner as are sales to other persons.

#### **Regulation 39-26-704.3**

Rooms and accommodations permanently occupied are exempt. "Permanently occupied" is defined by statute as occupancy for a period of thirty or more consecutive days.

"Written agreement" includes a hotel registration or a rent receipt. A canceled check by itself shall not qualify as a written agreement.

#### **Regulation 39-26-704.4**

Sales to "schools," as defined under C.R.S. 1973, 39-26-102(13), are exempt from sales tax. If a school is conducted for private or corporate profit, sales thereto are subject to the sales tax.

**Regulation 39-26-705.1**                      **[Repealed eff. 06/14/2016]**

**Regulation 39-26-706.1**                      **[Repealed eff. 08/30/2014]**

#### **REGULATION 39-26-707.1      ARTICLES AND CONTAINERS RE: FOOD PRODUCTS**

- 1) Nonessential articles or containers furnished in connection with sale of taxable food. On or after March 1, 2010, a retailer of food, meals, or beverages (referred to as "retailer") who purchases nonessential tangible personal property ("article") or nonessential containers or bags ("container") and furnishes the article or container to a consumer or user (collectively referred to as the "consumer") in connection with the taxable retail sale of food, meals, or beverages ("food"), must pay sales or use tax on the purchase of the nonessential article or container.
  - a) Nonessential articles and containers. An article or container is nonessential if it is primarily used for the convenience of the consumer and is not necessary to transfer the food to the consumer.

- i) Examples of nonessential articles or containers include, but are not limited to, non-reusable:
- utensils
  - skewers
  - napkins and towelettes
  - bibs
  - serving trays, platters, and dome lid covers to plates or platters
  - placemats, tray liners, and tablecloths
  - sacks
  - grocery bags
  - bags and bag ties for bulk grocery produce or bread
  - carryout containers for leftover food sold for immediate consumption
  - straws
  - toothpicks
  - stirring sticks
  - cup sleeves
  - portion dividers
  - single-use baking dishes
  - condiments, including ketchup, mustard, relish, and spices that are not incorporated into a prepared meal at the time it is transferred to the consumer but are provided separately, such as at a convenience counter. Condiments sold as food for domestic home consumption (e.g., condiment sales in grocery stores) are exempt from state sales and use tax. §39-26-707(1)(d), C.R.S.
- ii) Examples of essential articles or containers include, but are not limited to, non-reusable:
- plates, cups, or bowls (and lids for such items) on, or in which, unwrapped or unpackaged hot or prepared food and beverages are served to the consumer;
  - Cups used in vending machines dispensing beverages;

- Disposable containers or packaging material on, or in which, food is transferred to the consumer, including pizza delivery box, baskets, boxes, sleeves for French fries, buckets, clamshells or other containers if the retailer cannot transfer the food to the consumer without such article or container. However, carryout containers used to by a consumer to carry leftover meals from the restaurant are not essential.
- 2) Articles or Containers not furnished to consumer. A retailer is liable for sales or use tax for its purchase, use, storage, or consumption of an article or container, regardless of whether it is essential to the consumer, if the article or container is not transferred to the consumer. An article or container is treated as transferred to the consumer if the retailer makes the article or container available to consumers on the retailer's premises.
- a) Examples of non-transferred articles include, but are not limited to:
- i) Reusable articles such as glassware, ceramic plates, cloth napkins, and silverware;
  - ii) Non-reusable articles the retailer uses to cook or store food, such as plastic storage wrap for storage, aluminum foil used primarily for cooking, food labels, and cooking tray liners.

**Regulation 39-26-707.1(E) [Repealed eff. 06/14/2016]**

**Regulation 39-26-708.1**

Contractors and subcontractors should be aware that the exemption for charitable organizations applies only to those that qualify under C.R.S. 1973, 39-26-102(2.5) and to schools as defined in C.R.S. 1973, 39-26-102(13).

**Regulation 39-26-708.2(b) [Repealed eff. 05/30/2014]**

**Regulation 39-26-708.3**

Every contractor or subcontractor shall apply for a certificate of exemption prior to the time the work is started. Said contractor or subcontractor shall also obtain the exemption number from the exempt organization for whom the work is performed.

**Regulation 39-26-709.1**

For machinery to be used predominantly in manufacturing, the greatest use of the machinery must be its use in manufacturing. If a machine has other uses in addition to its manufacturing use, the manufacturing use must be greater than 50% of all use to qualify for the exemption. For purposes of determining whether the manufacturing use of an item of machinery is greater than 50% of all use, machinery which is shut off is not in use, even while being repaired or maintained.

- (A) The following are examples of direct uses in manufacturing:
- (1) Machinery which cleans or prepares raw or prepared materials for production on the manufacturing line, after manufacturing has begun and before it has stopped.
  - (2) Machinery which performs testing of a particular product tested during the manufacturing process, or testing as a step in a continuous manufacturing line process.

- (3) Loader, fork lift or conveyor belt machinery integral to the manufacturing line process, moving material from inventory on the contiguous plant site, through the manufacturing line steps, and such machines moving material through the final alternation or packaging.
- (B) The following are not direct uses in manufacturing, and are not exempt:
  - (1) Machinery used in repair and maintenance of machines or other items, or in cleaning of machinery. Repairing, maintaining or cleaning manufacturing facilities is not manufacturing. Manufacturing is working to alter a product within the manufacturing definition, or cleaning the product in its raw, intermediate or finished state.
  - (2) Machinery used in managerial, sale research and development, or other non-operational activities.
- (D) The limitation imposed by C.R.S. 39-26-709(1)(e) requires that property would have qualified for the investment tax credit against federal income tax. The investment tax credit was limited to used property, and only the first \$150,000 of used property in a tax period could be claimed as a credit against federal income tax. [§48(c)(2)(a), ref. §46(c) of the Internal Revenue Code of 1954 as it existed prior to the Tax Reform Act of 1986.] As the excess over \$150,000 could not qualify for credit against federal income tax, the excess does not qualify for the sales tax exemption. Therefore, annually, only the first \$150,000 of purchases of used machinery to be used directly and predominantly in manufacturing would qualify for this sales tax exemption. All purchases of used property in excess of that amount annually would be sales taxable.
- (E) Leases of machinery or machine tools used in manufacturing are exempt under the following conditions:
  - (1) The lessee must qualify for the investment tax credit (ITC) against federal income tax as was provided by Section 38 of the “Internal Revenue Code of 1954”, as amended. For federal ITC to have passed through to the lessee, the lease must be for more than three years. Leases under three years may qualify if within the transaction, complete payment for the machine occurs within three years, via balloon payments, large down payments, or full amortization of all financed balance over a short term lease.
  - (2) The minimum lease payments must be for more than \$500 during that three year period.
  - (3) The machinery must be used in Colorado directly and predominantly in manufacturing, (i.e., meet the other statutory tests).

**Regulation 39-26-709.2 [Repealed eff. 05/30/2014]**

**Regulation 39-26-711.1(a)**

A commercial airline is defined as an airline carrying freight or passengers on regularly schedule flights for a fee.

**Regulation 39-26-713.1(a)**

In order to secure this permission, the lessor must apply to the department prior to acquisition of such tangible personal property. This permission, once it has been granted, does not have to be requested for each purchase. The permission to collect tax on rentals or lease payments is in effect for all subsequent purchases, unless rescinded by the department. The department will give notice to any lessor if this permission is rescinded. Once the election is made by the lessor to collect tax on rentals or lease payments, he must continue to operate in this manner. He cannot alternate methods of paying tax on some purchases and applying for permission to collect tax on rentals or leases on other purchases. The department will furnish application forms for applying for this permission.

If permission has not been secured prior to the time that the tangible personal property is acquired, the lessor must pay the sales tax to the vendor. If immediately thereafter, the lessor applies for and receives permission to collect the tax on the rentals or lease payments, the lessor may apply for a refund of sales tax paid at the time of acquisition of the tangible personal property being rented or leased.

When leased property is sold by the lessor, sales tax should be collected and remitted on the actual additional considerations paid for such property at the time of sale. If the leased property being sold is a motor vehicle, unless the lessor is an authorized dealer, the tax will be paid by the purchaser at the time of application for title or registration, and in that instance the lessor should furnish the lessee with a bill of sale to show the selling price to the lessee.

Out-of-state or corporate lessors must designate an agent in Colorado for service of process.

See Regulation 26-105.2 for the method of taxing repairs used in maintenance of tangible personal property rented or leased.

This regulation will hereafter be referred to as “Lease/Rental Agreement.”

**Regulation 39-26-713.2(a)**

The “exemption statute” is intended to prevent the imposition of a use tax on tangible personal property where the consumer actually paid sales tax to a Colorado vendor or use tax to a licensed out-of-state vendor.

**Regulation 39-26-713.2(b)**

Use tax is a complement to sales tax. Since sales tax is imposed only on retail sales, which are defined by regulation as sales to the user or consumer of property or services sold, use tax shall not apply to the storage, use or consumption of tangible personal property purchased by a licensed retailer for resale within the regular course of a business.

Tangible personal property that was purchased tax free for resale or an ingredient of a manufactured or compounded product, and subsequently withdrawn from stock for the purchaser's own use or consumption, shall be taxed at the acquisition cost of all materials. The tax liability attaches at the time the tangible personal property is withdrawn from stock. The tax must be reported on the appropriate return provided by the Department.

The Act exempts a sale of tangible personal property which becomes an ingredient or component part of the product. To be exempt from the operation of the sales and use tax Acts, tangible personal property purchased by a manufacturer, which property enters into the processing of the manufactured article, must become a constituent part thereof, wholly or partially, either by chemical or mechanical means. (See Regulation (39-26-102.20.) (Also see *Western Electric v. Weed, Jr.*, 185 Colo. 340, 524 P.2d 1369 (1974) and *Bedford v. Colorado Fuel & Iron Corp.*, 102 Colo. 538, 81 P.2d 752 (1938).)



**Regulation 39-26-713.2(c)** [Repealed eff. 07/30/2018]

**Regulation 39-26-713.2(d)** [Repealed eff. 07/15/2017]

**Regulation 39-26-713.2(e)** [Repealed eff. 07/15/2017]

**Regulation 39-26-713.2(f)**

Use tax shall not apply to the storage, use, or consumption of tangible personal property, the sale or use of which has been subjected to a tax by another state and the tax paid in an amount equal to or in excess of the sales tax imposed by this article.

The storage, use, or consumption of tangible personal property, the sale or use of which has been subjected to a lesser tax than the tax imposed by this article, is not exempt; however, a credit for any similar tax paid to another state will be allowed against any tax accruing under this article, in respect to a given item of tangible personal property.

This exemption or credit will be denied if a tax paid to another state was not legally due under the laws of the other state.

Multistate Tax Compact. C.R.S. 1973, 24-60-1301, (Article V (1) of the Multistate Tax Compact) provides sales or use tax credit as follows:

“Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.”

**Regulation 39-26-713.2(g)**

The use tax law provides an exemption as to property brought into this state by a nonresident for his own use if he becomes a resident. This exemption does not extend to a nonresident engaged in business within this state who purchases tangible personal property for use or consumption in his business.

**Regulation 39-26-715.1(a)(I)**

An exemption from sales tax is granted on sales which are subject to tax under the motor fuel tax statute, article 27 of title 39, C.R.S. 1973, as amended. This exemption applies even though such motor fuel tax is refundable or has in fact been refunded, as in the case of farmers or other nonhighway motor fuel consumers.

Aviation jet fuel sales and special fuel sales not taxed under article 27 of title 39, C.R.S. 1973, are subject to sales tax because the exemptions and dates in the law do not apply to those sales.

**Regulation 39-26-715.1(a)(II)** [Repealed eff. 07/15/2017]

**Regulation 39-26-715.2(b)** [Repealed eff. 05/30/2014]

**Regulation 39-26-716.4(A)**

- 1) **Exemption.** A farm close-out sale that meets the requirements set forth in §39-26-102(4), C.R.S. and as more fully described in this regulation is exempt from sales and use tax. See, §39-26-716(4)(a), C.R.S.

- 2) **Due Diligence of auctioneer.** A farm close-out sale is often conducted by an auctioneer. An auctioneer is a retailer and responsible for collecting, reporting, and remitting sales tax on an auction sale, unless the sale is exempt or the owner has a sales tax license. §39-26-102(1.3), C.R.S. An auctioneer who is responsible for collecting sales tax must exercise due diligence to determine whether goods sold at an auction sale are exempt under the “farm close out sale” exemption. The department will presume that an auctioneer exercised due diligence if the auctioneer obtained a written declaration, signed by the farm or ranch owner or owner’s agent, and the declaration contains the following:
- a) a description of each item of property offered for sale (regardless of whether such property is actually sold) and in such detail as to allow the specific property to be identified by a third-party (e.g., VIN of motor vehicles and “disc plow” are sufficient, but “farm implement” is not sufficient);
  - b) a declaration that:
    - i) the property was used in the owner’s farming or ranching operation;
    - ii) the owner/owner’s agent is making or attempting to make a full and final disposition of all property used in the farming or ranching operation;
    - iii) the owner is abandoning the operation on the premises whereon the farming or ranching operation was previously conducted; and
    - iv) if the statement is signed by the owner’s agent, a declaration that the owner’s agent has personal knowledge of the facts supporting the statements or has confirmed with a person (whose name and address are set forth in the declaration) who has such personal knowledge, that the forgoing statements are true.
- 3) **Department may independently review declarations.** The department is not bound by such declarations and may independently review a farm close-out sale to determine whether the exemption applies.
- a) **Purchasers.** A purchaser is liable for sales tax if the department later determines that the exemption does not apply.
  - b) **Auctioneers.** An auctioneer who, through the exercise of due diligence, reasonably concludes that the sale qualifies as an exempt farm close-out sale is not liable for sales tax if the department later determines that the sale is subject to tax. An auctioneer who has reasonable grounds to believe that any property sold does not qualify for the farm close-out sale exemption must collect sales tax on such property and, if the purchaser believes that such sale is exempt, advise the purchaser that he or she may apply to the department which will evaluate whether the sale is exempt.
  - c) **Farm or Ranch Owners.** Farm and ranch owners typically are not “retailers” because they sell their farm and ranch produce at wholesale. Therefore, such owners do not have an obligation to collect tax on the sale of taxable goods. However, a farm or ranch owner who holds a sales tax license issued by the department must, among its other responsibilities as a retailer, exercise the same due diligence otherwise required of the auctioneer at a farm close-out sale.

- 4) **Claiming Farm Close-out sale exemption for motor vehicles.** The auctioneer or licensed owner shall provide, at the conclusion of the farm close-out auction sale, to the purchaser of exempt property a copy of the owner's or owner's agent's written declaration, if such declaration has been made. The purchaser of a motor vehicle sold as part of a farm close-out auction sale shall present a copy of the declaration to the county clerk when the purchaser registers the motor vehicle. The county clerk shall not collect any sales or use tax administered by the department if presented with such a declaration. If a purchaser a motor vehicle is not provided a declaration, the purchaser who believes that the purchase is exempt must pay the appropriate sales or use tax to the county clerk and may file a claim for refund with the department which will review whether the sale is exempt.
- 5) **Retained ownership of real property.** A farmer or rancher may retain ownership of his improved and unimproved real property and his personal property not used in the farming or ranching operations and still be eligible for this exemption if he is abandoning his farming or ranching operations.

**Regulation 39-26-716.4(b)** [Repealed eff. 05/30/2014]

**Regulation 39-26-716.4(c)** [Repealed eff. 05/30/2014]

**Regulation 39-26-717 MEDICAL MATERIAL, EQUIPMENT, AND DRUGS**

- (1) **General Rule.** The sale, use, storage, and/or consumption of the following items are exempt from state and state-administered local and special district sales and use taxes:
- (a) Prescription drugs if dispensed in accordance with a prescription by a licensed provider or furnished by a licensed provider as part of the licensed provider's professional services to the patient or client.
    - (i) A prescription drug includes a prescription drug dispensed or furnished for animals.
    - (ii) The sale of an exempt prescription drug that is bundled with the sales of a taxable good but the price for the exempt prescription drug is not separately stated is taxable if the true object of the transaction is the purchase of the taxable goods.
    - (iii) *Expired drugs.* A wholesale purchase of an exempt prescription drug by a pharmacy or licensed provider remains exempt as a wholesale sale even if the drug becomes expired or spoiled and is not dispensed to a patient or client.
  - (b) Insulin dispensed at the direction of a licensed provider, insulin measuring and injecting devices, hypodermic needles and syringes used only for insulin, and glucose used for preventing or treating insulin reactions.
  - (c) Blood and urine testing kits and materials, including glucose strips and puncture lancets. This exemption applies to blood and urine testing kits and related materials used for any purpose, such as testing for glucose, allergies, anemia, antibodies to hepatitis C, bilirubin, cholesterol, alcohol, pregnancy, and controlled drugs.

- (d) Prosthetic devices. A prosthetic device is an artificial device that is commonly understood to replace a missing or defective human or animal body part or function, and is designed, manufactured or adjusted to fit a particular individual. Items that are bought over-the-counter are generally not considered prosthetic devices. For example, a one-size-fits-all shoe insert may reduce discomfort from shin splints, but it is not commonly understood to be a prosthetic device.
  - (i) “Adjusted to fit a particular individual” means the prosthetic device must be altered by some means for use by a particular individual or animal. A one-size-fits-all type of device that can be adjusted by the individual for a better fit does not qualify as a prosthetic device. Artificial limbs, teeth and eyes are examples of exempt prosthetic devices. A device that is surgically implanted is adjusted to fit a particular individual.
  - (ii) As manufacturing processes advance, artificial body parts may become sufficiently sophisticated that individuals may adjust these items themselves. An artificial body part that is commonly understood to be a prosthesis will still be a prosthetic device notwithstanding the requirement that it be adjusted to fit a particular individual if the manufacture of such device has advanced sufficiently to allow it to be self-adjusted.
  - (ii) “Replace a missing or defective body part or function.” A device that does not replace a missing or defective body part or function is not a prosthetic device. A device that enhances a body part that is not defective or missing is not a prosthetic device. For example, night vision goggles that enhance your vision at night are not a prosthetic device.
- (e) Corrective eyeglasses and contact lenses, including over-the-counter corrective eyeglasses. However, eyeglass lens coatings (anti-reflective, scratch-resistant, anti-fog, etc.) that are separately stated on the invoice for corrective eyeglasses are taxable.
- (f) All sales of nonprescription drugs and materials furnished to a patient by a licensed provider as part of their professional services. However, not all drugs and materials are exempt.
  - (i) *Furnished to a Patient.*
    - (A) This exemption applies only if the nonprescription drugs or materials are actually furnished to the patient. Nonprescription drugs and materials are considered furnished to a patient if they either leave the facility with the patient or if they are consumed by the patient at the medical facility (i.e., the nonprescription drug or material is absorbed into the patient’s body). For example, ibuprofen, acetaminophen, aspirin, and topical antiseptics and pain relief administered to the patient at the provider’s facility are generally viewed as furnished to a patient even though they may not “leave” the provider’s office with the patient. In contrast, medical supplies such as heel pads used during surgery to prevent skin and tissue damage are primarily used by the provider, even though worn by the patient, because they are neither consumed by the patient nor do they leave the facility with the patient.
    - (I) Splints, casts, bandages, arm slings, packages of topical antiseptics and topical pain relief balms that are furnished to the patient for use outside the office are exempt because the patient leaves the provider’s office with these items; therefore, the patient is the ultimate consumer of them.

- (B) Items that are used or consumed by the licensed provider and not furnished to the patient are not exempt from tax. For example, tongue depressors, single-use scalpels, sponges, and other items that are consumed by the provider in the delivery of the professional services are taxable.
- (C) This exemption does not apply to purchases made by the patient from any retailer or entity other than the licensed provider, even if the licensed provider recommends the nonprescription drug or material. For example, the purchase of bandages from a medical supply retailer is not exempt from sales and use tax, even if the licensed provider recommends the use of such bandages, because the bandages were not furnished by the licensed provider.
- (D) *Resale Exemption.*
  - (I) A licensed provider's purchase of any nonprescription drugs and materials furnished to patients are exempt as a sale for resale, regardless of whether the licensed provider separately states the charge for the material on the patient's invoice.
  - (II) Purchases of non-medical materials that are primarily used by the patient and are separately stated on the patient's invoice are exempt from sales and use tax when purchased by the provider, but are taxable when resold to the patient. These materials include baby diapers, disposable razors, boxes of tissues, deodorant, mouthwash, hand lotion (even if medicated), baby bottles, denture cleaner and adhesive, slippers, shave kits, admission kits, sanitary pads, and tampons. Sales tax must be collected on the selling price of taxable patient supplies if the price is separately stated on the invoice. If the price for such materials is not separately stated, then the provider is considered the ultimate consumer of the material and, therefore, cannot claim a resale exemption for purchases from suppliers and must pay sales tax when purchasing the items. Hospitals must present their sales tax number to vendors of taxable patient supplies in order to purchase such supplies tax-free for resale.
  - (III) Items used primarily by the provider (e.g., disposable scalpels, surgical masks, gloves) are not considered resold to the patient even if the items are separately stated on invoices.
- (ii) *Patient.* Sales of materials and nonprescription drugs qualify for this exemption only if they are furnished by the licensed provider to a patient. A licensed provider must determine whether the individual receiving their services is a "patient" as the term is used in §39-26-717, C.R.S.
- (iii) *Professional Services.*
  - (A) A product must be provided to a patient as part of the professional services.

- (I) *Example.* If a licensed provider performs surgery to repair knee cartilage, and, as a necessary part of the service, sells the knee brace to assist in the recovery of the surgery, then the sale of the knee brace is exempt because it is provided as part of the professional service. However, if the licensed provider performs knee surgery and, in addition to the knee brace, the patient elects to purchase an orthopedic pillow for the patient's recurring neck pain (for which the patient is not seeing the provider), the sale of the pillow is unrelated to the professional service, and, therefore, the sale of the orthopedic pillow does not qualify under this exemption.
- (B) A licensed provider is the ultimate consumer of the materials used to provide a service. Therefore, items that are purchased and consumed by the licensed provider in the course of their professional services are not eligible for this exemption. In general, materials that are primarily used by the provider in the provider's facility are considered consumed by the provider, even if the provider separately states a charge for the item on the patient's invoice.
- (C) Examples of nonprescription drugs and materials consumed by the provider include:
  - (I) Non-medical operational supplies and equipment, such as light bulbs, toilet paper, floor wax, and office equipment and supplies.
  - (II) Medical supplies and equipment, such as tongue depressors, latex gloves, gowns, masks, linen, X-Ray equipment and film, hemostats, and scalpels. A medical service provider can buy materials tax-free if the provider qualifies as a charitable or governmental entity (e.g., state or county owned hospital). For-profit hospitals must pay sales tax when they buy these materials.
- (g) Hearing aids.
- (h) All equipment and related accessories for sleep therapy, inhalation therapy, and electrotherapy dispensed pursuant to a prescription. See below, in paragraph (2), for additional rules and limitations relating to this type of equipment and its accessories.
- (i) Oxygen delivery equipment and disposable medical supplies related to oxygen delivery equipment dispensed pursuant to a prescription. See below, in paragraph (2), for additional rules and limitations relating to this type of equipment and its accessories.
  - (i) Oxygen delivery equipment is a system used to transport oxygen directly into the patient's lungs and administered because the patient experiences an inadequate supply of oxygen. Devices that assist the patient only in breathing and do not directly deliver oxygen into the patient's lungs do not qualify as oxygen delivery systems. The sale or use of oxygen delivery equipment and related disposable supplies are exempt from sales and use taxes when sold or leased to an individual for their personal use pursuant to a prescription. Oxygen delivery equipment includes:

- (A) Liquid oxygen containers, high-pressure cylinders, regulators, oxygen concentrators, tubes, masks and related items necessary for the delivery of oxygen to the patient.
  - (B) Ventilators and Other Respiratory Equipment that produce a form of controlled respiration in which compressed air is delivered under positive pressure into the patient's lungs. Pressure ventilators and volume ventilators provide assisted respiration and intensive positive pressure in which compressed air, a component of which is oxygen, is administered into the breathing systems of patients to help them breathe.
  - (C) Respiratory equipment that induces air into the lungs of a patient, through the application of pressure to the chest area, regardless of whether the pressure applied is negative pressure or positive pressure.
  - (D) Exsufflation belts, iron lungs, chest shells, pulmo wraps, and the pumps and regulators necessary for the operation of the listed equipment.
  - (E) Oxygen delivery equipment includes repair and replacement parts.
- (j) Medical, feeding, and disposable supplies, including any related accessories, for incontinence, infusion, enteral nutrition, ostomy, urology, diabetic care, and wound care dispensed pursuant to a prescription. See below, in paragraph (2), for additional rules and limitations relating to this type of equipment and its accessories.
- (k) Durable medical equipment, including repair and replacement parts, dispensed pursuant to a prescription. See below, in paragraph (2), for additional rules and limitations relating to this type of equipment and its repair and replacement parts.
- (i) Durable medical equipment means equipment that:
    - (A) Can withstand repeated use;
    - (B) Is primarily and customarily used to serve a medical purpose;
    - (C) Is generally not useful to a person in the absence of illness or injury; and,
    - (D) Is not worn in or on the body.
  - (ii) The durable medical equipment must be dispensed pursuant to a prescription. This means that only patients of the licensed provider are eligible for the exemption. Durable medical equipment purchased by the medical facility for use in the medical facility is not eligible for the exemption.
  - (iii) Durable medical equipment includes, but is not limited to, the following equipment, but only if the item also meets the requirements of (k)(i), above. In general, equipment used primarily for preventative care, such as elder care or bariatric care, is not exempt durable medical equipment because the equipment is primarily and customarily used in the absence of an existing illness or injury. Equipment not specifically designed for the treatment of an existing illness or injury does not qualify for the durable medical equipment exemption even though the licensed provider may believe that the equipment is useful or beneficial to the patient.
    - (A) Drug infusion equipment (non-implanted), intravenous poles and pumps.

- (B) Standing, reaching, walking, sitting, and sleeping aids, including wheelchairs, canes, walkers, adaptive car seats, sitting and sleeping cushions, overbed tables, specially designed hand utensils, trapeze bars, foam wedges and cushions, alternating pressure pads, specialized seating and desks, stairglides, lifts in home, patient transport devices, boards, decubitis seating and sleeping pads for existing decubitis ulcers, patient lifts and slings.
- (C) Toilet, bath and shower aids, including bed pans, urinals, and raised toilet seats, tub stools or benches, bath rails, and sitz bath chairs.
- (D) Communication devices for physically impaired, including writing and speech aids for the impaired.
- (E) Injection guns.
- (F) Electronic nerve stimulators (non-implanted), insulin infusion pumps (non-implanted).
- (G) Enteral feeding pumps and bags.
- (H) Heat lamps, heat pads, and hot water bottles.
- (I) Billi lights.
- (J) Traction equipment, splints, holders (non-implanted).
- (K) Oxygen equipment, including oxygen cylinders, cylinder transport devices (sheaths, carts), cylinder stands, support devices, regulators, flowmeters, tank wrench, oxygen concentrators, liquid oxygen base dispenser, liquid oxygen portable dispenser, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, oxygen fittings, accessories.
- (L) Respiratory therapy equipment, including room humidifiers, vaporizers, aspirators, aerosol compressors (stationary and portable), ultrasonic nebulizers, volume ventilators, respirators and related device supplies, percussors, vibrators, intermittent positive pressure breathing, circuits, devices and supplies, air oxygen mixers, oxygen concentrators, apnea monitors, ventilator vaporizers, tubing.
- (M) Manual resuscitators
- (N) Physical and occupational therapy equipment, including hand exercise equipment putty, leg weights, bone fracture therapy devices (but not implanted fixators), muscle and nerve stimulators (non-implanted), paraffin baths, hydrocollators.
- (O) Eating and drinking aids, including specialized utensils.
- (P) Stethoscope.



- (Q) Hospital beds. The bed must be specially designed for the treatment of an existing illness or injury (e.g., adjustment mechanisms to adjust head and leg height and angle), marketed primarily for medical use, and the design components must represent a significant portion of the cost of the bed (e.g., a inexpensive alert light does not convert a conventional bed into an exempt hospital bed). This exemption does not include the bed mattress, unless the mattress is specifically designed for the qualifying bed or the mattress qualifies as durable medical equipment.
- (I) Mobility enhancing equipment, including repair and replacement parts, dispensed pursuant to a prescription. See below, in paragraph (2), for additional rules and limitations relating to this type of equipment and its repair and replacement parts.
  - (i) Mobility enhancing equipment means equipment that:
    - (A) Is primarily and customarily used to provide or increase the ability to move from one place to another;
    - (B) Is appropriate for use in a home, in a person's community, or in a motor vehicle;
    - (C) Is not generally used by persons with normal mobility; and,
    - (D) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.
  - (ii) Mobility enhancing equipment includes, but is not limited to:
    - (A) Wheelchairs and wheelchair components and accessories.
    - (B) Walking aids, such as crutches, canes, or walkers.
    - (C) Grab bars, trapeze bars.
    - (D) Lift chairs and patient lifts.
    - (E) Motorized carts and scooters.
    - (F) Controls installed on motor vehicles.
    - (G) Related accessories, such as ramps, motorized mechanical lifts, and carrying racks whose primary and customary purpose is to load or carry an exempt scooter in or on a motor vehicle.
  - (iii) This exemption applies even if the purchaser does not have an illness or injury, but must still be provided pursuant to a prescription.
  - (iv) Items that are not primarily and customarily used to enhance mobility do not qualify. If an item is related to mobility but mobility enhancement does not serve as the primary purpose, such as shoe insoles, arch pads, dancer pads, knee braces, ankle braces, etc, the item is not exempt as mobility enhancing equipment.

- (2) **Definitions and limitations re: paragraphs (1)(h-l).** This paragraph 2 relates only to sleep therapy equipment, inhalation and electrotherapy, oxygen delivery equipment and related supplies, durable medical equipment, mobility enhancing equipment, and allowed accessories, and the supplies described in paragraph (1)(j) of this rule.
- (a) “Prescription” means any order in writing, dated, and signed by a licensed physician, physician’s assistant, or advanced practice nurse with prescriptive authority, or given orally by such a person and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, or by a representative of a business licensed to sell items described so long as such order is also followed by an electronic submission of the order to the business, specifying the name and address of the person for whom an item is ordered and directions, if any, to be included with such item.
- (b) *Exemptions for hospital and other providers of medical services.* A hospital or other medical service provider’s purchase of equipment and materials listed in subparagraphs (1)(h-l) are not exempt under those exemptions because the provider’s purchase is not pursuant to a prescription. The provider’s purchase is also not exempt under the sale for resale exemption, even if the provider separately states a rental fee for use of such equipment while at the provider’s facility, because the provider is in control of the equipment while the patient is in the provider’s facility and, as such, the provider is the ultimate user and consumer of the equipment. However, sales and rental of such equipment by medical service providers to patients who leave the provider’s facility to use the equipment are exempt if the equipment is prescribed and otherwise meets the requirements of the exemption. For example, a provider cannot purchase drug infusion equipment exempt of tax even if the provider charges a rental fee to the patient for use of the equipment while the patient is in the provider’s facility. However, a rental charge by the provider to a person who rents the qualifying equipment for use at home is exempt from tax.
- (c) Items listed in (h) to (l), above, are not exempt when used for animals because the reference to “person” in the definition of “prescription” (§§39-26-717(1)(g-i) and (2)(a-b), C.R.S.) does not include animals.
- (d) Effective date. Exemptions listed in subparagraphs (h) through (l) are effective August 10, 2011. Certain prosthetic and therapeutic devices that are exempt under subsections (h) to (l) were also exempt prior to the effective date. See Department FYI Sales 68 (Medical and Dental Supplies and Equipment) for a partial listing of items exempt and not exempt prior to August 10, 2011.
- (3) **Medicare, Medicaid, and workers’ compensation reimbursements of non-exempt drugs and equipment.** Purchases by a non-governmental retailer do not fall within the governmental entity exemption (§39-26-704(1), C.R.S.) even when the retailer is reimbursed by a governmental entity such as Medicare or Medicaid. If the retailer accepts Medicare assignments, then Medicare payments to the retailer include sales tax and this tax must be remitted by the retailer to the Department (Section 5213, Medicare Carriers Manual). If the retailer does not accept Medicare assignments, then the retailer must remit that portion of the Medicare payment that represents sales tax, together with sales tax computed on that portion of the total charge not covered by Medicare. Purchases of nonexempt drugs and equipment by a purchaser who is reimbursed by Medicare, Medicaid, and workers’ compensation reimbursements also do not qualify as an exempt governmental purchase. However, purchases directly made by Medicare or Medicaid are exempt as a purchase by a governmental entity.

Cross Reference(s)

1. See Department publication FYI Sales 68 “Medical and Dental Supplies and Equipment” for additional information.

**Regulation 39-26-717.1 [Repealed eff. 04/30/2014]**

**Regulation 39-26-718 CHARITABLE AND OTHER EXEMPT ORGANIZATIONS**

**(1) General Rule.**

- (a) Purchases by charitable organizations are exempt from state sales and use taxes and state-administered local sales and use taxes if the purchases are part of the charitable organization's regular charitable functions and activities.
- (b) Sales by charitable organizations generally are not exempt from sales tax, except for occasional sales, sales where a portion of the purchase price is a donation, and sales by certain school-related entities.
- (c) The following are common situations where the acquisition of property by a charitable organization is not subject to sales tax.
  - (i) The charitable organization does not pay the donor for the donation (sales tax does not apply to transactions when consideration is not paid), or
  - (ii) The purchase was part of its regular charitable function and activity, or
  - (iii) The purchase was made with the intention of reselling the item at a fundraising event, in which case the charitable organization's purchase is exempt as a wholesale purchase for resale.

**(2) Types of Charitable Organizations.**

- (a) Charitable organizations must serve a public rather than a private interest and be organized and operated exclusively for one or more of the following purposes or functions:
  - (i) Religious; to the extent consistent with *Catholic Health Initiatives Colo. v. City of Pueblo*, 207 P.3d 812, (Colo. 2009).
  - (ii) Charitable;
  - (iii) Scientific;
  - (iv) Literary;
  - (v) Educational;
  - (vi) Testing for public safety;
  - (vii) Fostering national or international amateur sports competition, as long as no part of its activities involves providing athletic facilities or equipment;
  - (viii) Preventing cruelty to children or animals;
- (b) *Limited Purpose Charitable Organizations.* A veterans' organization registered under section 501(c)(19) of the Internal Revenue Code of 1986 is a charitable organization only when sponsoring a special event, meeting or other function in the State of Colorado, so long as such event, meeting or function is not part of such organization's regular activities in the state.

- (c) Charitable, as used in (2)(a)(ii) of this rule, is used in its generally accepted legal sense and is, therefore, not to be construed as limited by the separate enumeration of other tax-exempt purposes which may fall within the broad outlines of *charity* as developed by judicial decisions. Charitable includes:
  - (i) Relief of the poor and distressed or of the underprivileged;
  - (ii) Advancement of education or science;
  - (iii) Erection or maintenance of public buildings, monuments, or works;
  - (iv) Lessening of the burdens of government;
  - (v) Care of the sick, infirm, or aged;
  - (vi) Lessen neighborhood tensions;
  - (vii) Eliminate prejudice and discrimination;
  - (viii) Defend human and civil rights secured by law; or
  - (ix) Combat community deterioration and juvenile delinquency.
- (d) Educational, as used in (2)(a)(v) of this rule, relates to:
  - (i) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
  - (ii) The instruction of the public on subjects useful to the individual and beneficial to the community.
- (e) Testing for public safety, as used in (2)(a)(vi) of this rule, includes the testing of consumer products to determine whether they are safe for use by the general public.
- (f) Scientific, as used in (2)(a)(iii) of this rule, includes carrying on of scientific research in the public interest. For research to be scientific, it must be carried on in furtherance of the scientific purpose.
- (g) *IRS 501(c)(3) Certificates.* A charitable organization that holds a 501(c)(3) determination letter from the Internal Revenue Service is provisionally presumed to qualify as a charitable organization that is exempt from Colorado sales and use tax. However, the Department is not bound by an IRS determination of an organization's charitable status, and the Department may independently evaluate whether the entity qualifies as a charitable entity.
- (h) *Religious Organization.* The IRS does not require religious organizations to apply for a 501(c)(3) certificate in order to qualify as a tax-exempt charitable organization. In such cases, the Department will issue a sales tax exemption certificate to a religious charitable entity, even in the absence of an 501(c)(3) certificate, if the organization has a charitable purpose and meets the conditions set forth below. In lieu of the 501(c)(3) certificate, a religious organization shall provide to the Department a copy of its IRS No Record of Exempt Organization letter and Department Form DR 0716, "Statement of Nonprofit Church, Synagogue, or Organization".

- (i) If the applicant is a religious organization that is an affiliate of a national organization that holds a Colorado exemption certificate, applicant may submit, in lieu of such a determination letter, documentation from the national organization demonstrating that applicant is an affiliate of such organization.
  - (i) *Nonprofit Organizations.* An organization that is a nonprofit or an organization that performs some charitable services or provides funding to a qualified charitable organization does not automatically qualify as a charitable organization for sales and use tax purposes. In order to qualify, the organization must be established and operated exclusively for one or more of the charitable purposes listed above. Examples of organizations that do not typically qualify as a charitable organization for purposes of this exemption are nonprofit country clubs, private clubs, employees or social clubs or organizations, nonprofit recreational organizations, lodges, patriotic organizations (veteran organizations have a limited exemption, discussed below), fraternities, sororities, professional and trade associations, civic organizations, labor unions, political organizations, and other nonprofit entities.
- (3) **Application for Exemption Certificates.**
  - (a) Applicants must submit a completed application for a sales tax exemption certificate and include a copy of the organization's federal 501(c)(3) determination.
  - (b) Notwithstanding a determination by the IRS of an applicant's charitable status, the Department may conduct, either before or after the issuance of an exemption certificate, an independent review of whether the organization qualifies as a charitable organization.
- (4) **Restrictions on Charitable Organization Activities.**
  - (a) *Exclusively.* An organization will be regarded as operating exclusively for one or more exempt purpose only if the organization exclusively engages in activities in furtherance of its exempt purpose. A charitable organization will not lose its exempt charitable status if its non-charitable activities are insubstantial.
    - (i) *Examples.*
      - (A) If the religious organization operates a restaurant or coffee shop for the public unrelated to its charitable propose, then the organization does not qualify for the exemption because this activity is not considered part of the organization's charitable function. Note that sales by a charitable organization are not generally exempt from sales tax. For example, sales by a church in a coffee shop operated on church property are subject to sales tax even if the revenues from such sales are insubstantial, unless the sales qualify under the occasional sale exemption or the donation exemption, discussed below.
      - (B) Providing meals to the poor or homeless for free or below cost is generally considered a charitable activity.
  - (b) *Other Restrictions.* A charitable organization, excluding veterans' organizations, is subject to the following limitations in order to qualify for the sales and use tax exemption certificate:

- (i) No part of an organization's net earnings can benefit any private shareholder or individual. Compensation paid by the organization for services rendered, including services performed by employees or officers of the charitable organization, must be reasonable.
  - (A) The fact that an organization charges a fee for its goods or services is not fatal to a claim that it is a charitable organization. However any profit that a charitable organization generates must be used for charitable purposes. Factors that the Department will consider with respect to whether an organization that charges fees is a charitable organization include: (i) whether such fees vary depending on the need of the recipient of the goods or services; and (ii) the extent to which such fees show material reciprocity or *quid pro quo* transactions between the organization and those it serves.
  - (B) Example: A mutual benefit society is an organization whose benefits are available only to its members and/or their beneficiaries and requires payment by its members as a condition to receiving such benefits. A mutual benefit society is not organized for a charitable purpose, and is not a charitable organization exempt from sales and use taxes under this exemption.
- (ii) No substantial part of an organization's activities can be carrying-on propaganda or otherwise attempting to influence legislation. For example, an organization whose main activity is scientific is not a charitable organization for sales and use tax purposes if a substantial portion of the organization's activities involves dissemination of propaganda that is favorable to its political objectives or consists of lobbying for legislation that supports the organization's activities and mission.
- (iii) An organization may not participate in, or intervene in, a political campaign on behalf of any candidate for public office (including the publishing or distributing of statements).

(5) **Purchases by Charitable Organizations.**

- (a) Purchases by charitable organizations are exempt from sales and use taxes if the goods or services are used exclusively in the conduct of the charitable organization's regular charitable functions and activities. Purchases must be made directly from the organization's funds and, for purchases over two-hundred fifty dollars, must be made with a check or credit card issued in the organization's name. Purchases made with funds other than the organization's own funds or purchases made with a charitable organization's funds but reimbursed by someone who is not a qualified charitable organization are not exempt from sales or use tax. Whenever a charitable organization purchases tangible personal property (such as cards, food, cars, etc.) that is to be transferred to anyone else for personal use and all or part of the price of the goods is recouped from the user through direct payment, donation or games of chance (but not including a sale), the organization's exempt status does not apply and sales tax must be paid to the vendor by the exempt organization. If such purchases are made outside Colorado or in Colorado without payment of Colorado sales tax, the tax must be paid directly to the Department by the organization.
  - (i) *Examples.*
    - (A) A purchase made on behalf of a charitable organization with a credit card issued in the name of an individual is not exempt.

- (B) An educational charitable organization's purchase of computers is not exempt if the computers are given to members of the organization who use the computers for their own personal use or who reimburse the organization.
    - (C) An educational institution's purchase of athletic equipment or uniforms is not exempt from sales and use tax if the educational institution is reimbursed for the equipment or uniforms from students or their families.
  - (b) *Veterans' Organizations.* Purchases by veterans' organizations that are registered under section 501(c)(19) of the Internal Revenue Code are exempt only if the goods are used for a special event, meeting, or other function that is not part of the organization's regular activities in Colorado. The Department does not issue an exemption certificate to veterans' organizations. Instead, veterans' organizations must apply for a special event license for each special event or function. Veterans' organizations make exempt purchases by presenting the special events license to the vendor. Because veterans' organizations are only a charitable organization when sponsoring a special event, meeting, or other function so long as such event, meeting, or function is not part of the organization's regular activities in this state and because the occasional sales exemption requires that the funds be used in the regular course of the organization's charitable activities, sales by veterans' organizations do not qualify for the occasional sales exemption.
- (6) **Donor's Obligation for Sales and Use Tax.**
  - (a) A donor who purchases tangible personal property for the purpose of donating it to a charity must pay sales or use tax on the purchase and cannot claim the charitable organization's exemption. The donor cannot claim a sale for resale exemption because the property is donated, not resold, to the charitable organization.
  - (b) A retailer who initially makes a wholesale (exempt) purchase of an item for resale (e.g., retailer buys an item for its inventory it plans to resale) and later withdraws that item from inventory and donates it to a charitable organization incurs use tax on the withdrawal from inventory. However, see the cross reference (5) for information on the exemption for donations of manufactured goods by manufacturers.
- (7) **Sales by Charitable Organization.**
  - (a) *General Rule.* Sales made by charitable organizations are generally not exempt from sales tax, unless the sale qualifies for the occasional sale exemption, as a donation, or for any other exemption that may apply (see paragraphs (8) and (9) of this rule). For that reason, a charitable organization that makes repeated sales of tangible personal property to the public and otherwise meets the definition of a retailer must have a sales tax license and collect and remit tax in the same manner as any other retailer. For example, a charitable organization that operates a gift or book shop, rummage store, or coffee shop must collect sales tax on sales. The fact that the merchandise sold may have been acquired by gift or donation, or that the proceeds are to be used for charitable purposes, does not make the sales exempt from tax.
  - (b) *Occasional Sale Exemption.* Occasional sales of taxable tangible personal property by a charitable organization that holds a Colorado exemption certificate are exempt from sales and use taxes. See paragraph (10), below, for information of local taxes. An occasional sale must meet the following criteria:

- (i) The charitable organization conducts sales for a total of twelve days or less during a calendar year, and
  - (A) Each day a sale occurs is counted as an entire day, even if the sale occurs for less than a full day or the organization characterizes a multi-day sale as one event.
- (ii) The “net proceeds” from all these events do not exceed twenty-five thousand dollars in that calendar year. “Net proceeds” means the total gross receipt(s) minus expenses directly attributable to the event(s).
  - (A) “Directly attributable” generally means those expenses that would not have arisen but for the occurrence of the event and do not include indirect and overhead costs, such as administrative staff wages, insurance unless purchased for the specific event, rent otherwise due even if no event was held, property taxes, and other expenses that would be incurred even in the absence of the event.
  - (B) Payment by the charitable organization to acquire any goods that are later sold at a fundraising event is an expense that is deducted from the gross proceeds to determine net proceeds.
  - (C) When a charitable organization exceeds either threshold described in paragraph (7)(b)(i) or (ii), then all sales that occur in that calendar year are subject to tax, including sales in that calendar year that were previously exempt prior to the date when the threshold was exceeded. Sales tax applies to the gross proceeds, not the net proceeds. The charitable organization must have a sales tax license if and when either of these limits is exceeded.
    - (I) *Example 1.* Charitable organization conducts one auction sale which generates \$30,000 in gross proceeds and \$20,000 in net proceeds. Because neither threshold was exceeded, the charitable organization does not collect, report, or remit sales tax.
    - (II) *Example 2.* Same facts as Example No. 1, but net proceeds are \$26,000. Charitable organization has exceeded the \$25,000 threshold, and, therefore, must collect, report, and remit sales tax on the gross proceeds of \$30,000.
- (iii) The funds retained by the charitable organization are used in the course of the organization’s charitable service.
- (iv) *Living accommodations and other taxable services.* The exemption for occasional sales applies only to the sale of tangible personal property. Therefore, sales of taxable services by a charitable organization are subject to tax. For example, a charitable organization conducts a silent auction at which it auctions a weekend rental of a timeshare or hotel room. The sale of living accommodations is a sale of a service. The sale is subject to state and local sales taxes applicable to where the accommodation is located even if the charitable organization has not exceeded the twelve day or twenty-five thousand dollar thresholds. The sale of the living accommodation is not included in the calculation of the twenty-five thousand dollar threshold.



- (A) If the auction is not conducted in the same state-administered local jurisdiction in which the living accommodation is located, then the charitable organization must register with the Department for the local jurisdiction where the accommodation is located and collect the local sales taxes, including any lodging or local marketing district taxes, applicable to the rental of living accommodations.
- (v) *Goods sold on consignment.* Goods given by a retailer to a charitable organization for sale at a fundraising event with the understanding that the goods will be offered for sale at a minimum price and the minimum price is paid to the retailer, and with the further understanding that the goods would be returned to the retailer if not sold at the event are subject to sales tax on the minimum price even if the twenty-five thousand dollar threshold is not met. For example, a bike shop offers a bike to a charitable organization to be sold at a fundraising auction, but the bike shop requires the charitable organization to pay the bike shop a portion of the purchase price in the event the bike is sold. The charitable organization must collect sales tax from the successful bidder for the payment made to the bike shop, even if the net proceeds from the event do not exceed the twenty-five thousand dollar threshold.
- (c) *Donations.* A portion of the purchase price for a sale made by a charitable organization may be a donation if the amount paid exceeds the fair market value of the good purchased.
  - (i) The exclusion of donations from the tax base applies even if the charitable organization exceeds the twelve day / twenty-five thousand dollar threshold of the occasional sale exemption. This rule also applies to state-administered local sales taxes even if the local tax jurisdiction elected to tax occasional sales of charitable organizations.
  - (ii) The donation amount is not included in the calculation of the twenty-five thousand dollar net proceeds threshold for the occasional sale exemption.
  - (iii) *Examples.*
    - (A) An electronic retailer donates a laptop computer that it sells for \$700 at retail. The charitable organization offers the laptop computer at a silent auction and discloses that the fair market value of the laptop computer is \$700. The winning bid is \$1,000. \$300 is a donation not subject to tax.

- (B) Charitable organization sells 300 tickets for \$100 for a dinner and silent auction event. This is the charitable organization's only event that calendar year. Organization discloses to ticket purchasers that \$75 of the \$100 ticket price is a donation. Each dinner costs the charitable organization \$10. Charitable organization generates \$33,000 in silent auction gross sale proceeds (\$30,000 derived from the auction of taxable tangible personal property, \$1,000 from the auction of non-taxable services and gift certificates, and \$2,000 from the auction of taxable vacation rentals), \$20,000 in net proceeds from the silent auction, and \$4,500 from the sale of dinner  $((\$25 - \$10) \times 300)$ , for a total in net proceeds of \$24,500. Because the \$75 is a donation and not proceeds from a sale of what would otherwise be taxable goods, the \$22,500  $(\$75 \times 300)$  in donations from ticket sales is not added to the \$24,500 in net proceeds to determine whether the \$25,000 in net proceeds threshold is exceeded. Sales tax is not due on the net proceeds because the charity has not exceeded the \$25,000 threshold. The \$1,000 in non-taxable services and gift certificates and the \$2,000 in taxable living accommodations are excluded from the net proceeds calculations because the services and gift certificates are not taxable and the living accommodations do not qualify under the occasional sales exemption, which applies only to taxable tangible personal property and not taxable services. (Tax must be collected on the living accommodations.)
- (I) *Local Sales Taxes.* If the state-administered local tax jurisdiction in which the sale occurred elected not to exempt occasional sales by charitable organizations, then the local tax applies to the gross proceeds from the sale of dinner and auction items, even if the organization did not exceed the \$25,000 net proceeds threshold, but local tax does not apply to the \$75 per ticket because a donation is not subject to state or local sales taxes.
- (C) Same facts as Example No. 2, except the net proceeds from the auction sale are \$23,000. Because the net proceeds threshold is exceeded  $(\$23,000 + \$4,500)$ , sale tax applies to the gross price, not just the net proceeds, for all dinners  $(\$25 \times 300)$  and to the gross price all of the sales at auction  $(\$30,000 + \$2,000)$ . Sales tax is not collected on the \$1,000 in the sales of non-taxable services and gift cards and not on the \$22,500 in donations.
- (iv) In order to claim a sales tax exemption for a donation included in the buyer's purchase price, the buyer and charitable organization must establish the following:
  - (A) the fair market value of the taxable item or service, and
  - (B) that the buyer knowingly paid in excess of the fair market value with the intent to donate that excess portion of the price to the charitable organization.

- (v) The Department will presume that the price paid for an item sold at auction is the item's fair market value and that the buyer did not knowingly pay in excess of the fair market value. These presumptions can be rebutted by reasonable evidence, such as the price for comparable goods sold by a retailer in its regular course of business and that buyer knew the fair market value of the goods at the time of the purchase. For example, the fair market value of a signed professional sports jersey sold at auction will be presumed to be the price paid by the successful bidder, but the presumption can be rebutted by documentation of the sales price of a comparable signed jersey sold to the public at the professional team's or other retail store.

(A) *Examples.*

- (I) A charitable organization holds a fundraising dinner for which patrons purchase a ticket for \$100 per person. The organization compiles information that establishes that the fair market value of the dinner is \$25 and the cost per meal is \$10. The organization establishes that purchasers knowingly paid in excess of the fair market value of the item by disclosing to patrons, at the time tickets are sold, that the fair market value of the dinner is \$25 (or that \$75 of the \$100 purchase price is a donation). State sales tax is due on the \$25 if the organization exceeded the \$25,000 net proceeds threshold.
- (II) The fair market value of an item sold at auction is not based on the cost to the organization to acquire the item. For example, a donor may donate a set of golf clubs or a night stay at a condominium to the organization to be auctioned at a fundraising event. The fair market value of the golf clubs or room is not zero even though the organization acquired the golf clubs or room for free. The fair market value is the price at which the item would sell on the open market.
- (III) A charitable organization holds a fundraising auction. The organization previously conducted concession sales and other fundraising sales for twelve days in the same year. The organization compiles information of the fair market value of each of the items sold at auction. The organization establishes that the purchaser knowingly paid in excess of the fair market value of the item by disclosing the fair market value of the auctioned items to potential bidders prior to bidding. The organization does not collect sales tax on that portion of the purchase price that exceeds the fair market value.

- (vi) The Department will presume that any donation that qualifies as a donation for federal income tax purposes also qualifies as a donation for sales tax purposes.

(8) **Parent-Teacher Associations.** Sales by associations or organizations of parents and teachers of public school students are exempt from sales tax if:

- (a) The association or organization is a charitable organization, and;
- (b) The sale proceeds are used for the benefit of a public school, an organized public school activity, or to pay reasonable expenses of the association or organization.

- (c) The exemption does not apply to sales by private schools. However, sales by private schools that qualify as charitable organizations are exempt as occasional sales or are not taxable to the extent the purchase price is a donation, or are exempt pursuant to paragraph 9, below. §39-26-718(1)(c), C.R.S. See paragraph (10), below, for information on local taxes.
- (d) *Occasional Sales Restrictions Do Not Apply.* This exemption applies even if the sale has exceeded the occasional sale exemption threshold (twelve days / twenty-five thousand dollar as discussed in (7)(b) "Occasional Sale Exemption").
  - (i) *Example.* A public school parent-teacher association can raise funds by selling candy exempt from sales tax in order to purchase school sports uniforms. However, if the parent-teacher association is supporting a private school, its sales are taxable, unless the association is a charitable organization for educational purposes. In addition, if students reimburse the school for the uniforms, then tax must be collected on the amount paid by students.
- (9) **Sales by Public, Private Schools and Supporting Organizations.** Sales by public and private schools and supporting organizations are exempt from sales tax if the conditions described in paragraphs (a) to (d) are met. See paragraph (10), below, for information on local taxes.
  - (a) The school is for students in kindergarten through twelfth grade.
  - (b) Preschools, trade schools and post-secondary schools do not qualify.
  - (c) The sale is made by any of the following:
    - (i) the school;
    - (ii) an association or organization of parents and school teachers;
    - (iii) booster club or other club, group or organization whose primary purpose is to support a school activity; or
    - (iv) a school class, student club, group or organization.
  - These organizations qualify for this exemption even if they are not charitable organizations. Examples include: concession sales by booster club or a silent auction sales conducted by a parent-teacher association or school are exempt if all the proceeds are donated to the school or school-approved student organization
  - (d) All the proceeds from the sale, except the actual cost incurred by a person or entity to acquire the good or service sold, must be donated to the school or school-approved student organization. Actual costs incurred to acquire the goods or services include, payment facility charges (rent for space, furniture or equipment), labor (wages for security, independent contractors, employees), transportation, meals, insurance, and other costs.
  - (e) Sales by a parent-teacher association that are not exempt under this paragraph (9) may, nevertheless, be as exempt if the sale meets the requirements for an exempt sale as a charitable organization or as a public school parent-teacher association or organization.
  - (f) *Occasional Sales Restrictions do not apply.* This exemption applies even if the sale has exceeded the thresholds for the occasional sale exemption (twelve days / twenty-five thousand dollar as discussed in (7)(b) "Occasional Sale Exemption,").

- (g) Purchases by public schools are exempt from sales tax. §39-26-704(4), C.R.S.  
Purchases by private schools are not exempt unless the private school is a charitable organization.
- (10) **State-Administered Local Tax Jurisdictions.** State-administered cities and counties have the option to adopt the following exemptions from sales tax (1) occasional sales by charitable organizations, (2) sales that benefit a Colorado school, and (3) sales by an association or organization of parents and teachers of public school students that is a charitable organization. See, §29-2-105(1)(d)(I)(E), (K), and (L) C.R.S., respectively. However, state-administered special districts, such as the Regional Transportation District, must always exempt such sales from sales tax in conformity with state sales tax exemptions. Unless exempt, charitable organizations are responsible for collecting state-administered city and county sales taxes for the local jurisdiction in which the sale occurs. If the state-administered city or county taxes occasional sales, then the charitable organization must obtain a Colorado sales tax license prior to such sales so that the organization can report and remit the local sales tax to the Department, even though these sales are exempt from Colorado state sales tax. Home rule cities are not governed by these rules and procedures and should be contacted directly for more information on their procedures
- (11) **Other Tax Exempt Organizations.** Other tax-exempt organizations (including governmental entities) that sell tangible personal property (for example, through a secondhand goods retail store, a fundraiser sales event or routine sales of organization-related items) must obtain a sales tax license and collect all applicable state and local sales taxes.

Cross Reference(s):

1. For a list of state-administered local tax jurisdictions that levy sales tax on occasional sales, see Department publication “Colorado Sales/Use Tax Rates” (DR 1002), available at [www.colorado.gov/pacific/tax](http://www.colorado.gov/pacific/tax) > Instructions and Forms > Sales Tax > DR 1002.
2. For a list of home rule cities, see also Department publication “Colorado Sales/Use Tax Rates” (DR 1002).
3. For information on the exemption for donations of manufactured goods by manufacturers, see §39-26-705(2), C.R.S.
4. For additional information on sales related to schools, see §39-26-725, C.R.S.
5. Catholic Health Initiatives Colo. v. City of Pueblo, 207 P.3d 812, (Colo. 2009).

**Regulation 39-26-720.1**

Effective July 1, 2001, all sales of bingo equipment to a bingo-raffle licensee are exempt from sales and use tax. Bingo equipment means: With respect to bingo or lotto, the receptacle and numbers objects drawn from it, the master board upon which such objects are placed as drawn, the cards or sheets bearing numbers or other designations to be covered and the objects used to cover them, the board or signs, however operated, used to announce or display the numbers or designations as they are drawn, public address system, and all other articles essential to the operation, conduct, and playing of bingo or lotto, or, with respect to raffles, implements, devices, and machines designed, intended, or used for the conduct of raffles and the identification of the winning number or unit and the ticket or other evidence or right to participate in raffles. “Equipment” does not include electronic devices used as aids in the game of bingo.

Under current Colorado statutes, only a non-profit entity [section 12-9-102(1.8), C.R.S.] may obtain a bingo or raffle license and qualify for this exemption. The bingo licensee may rent a building for bingo, but the commercial landlord of that commercial bingo facility is not a licensee exempted by this statute. The person selling bingo supplies and equipment listed above to a bingo licensee may purchase those items to be sold tax free for resale.

### **Regulation 39-26-721.1**

“Purchase price” means the price to the final user/consumer as defined in C.R.S. 1973, 39-26-102(7).

Factory built housing includes, but is not limited to, modular homes or sectional homes, as defined in Special Regulations entitled “Modular or Sectional Homes”. Factory built housing include mobile homes as defined in C.R.S. 1973, 42-1-102(82)(b), which are used primarily for residential occupancy. See Special Rules concerning manufacturers and prefabricators acting as contractors.

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### **Editor's Notes**

#### **History**

Regulations 39-26-102.3, 39-26-102.13, 39-26-102.21, 39-26-707.1 emer. rules eff. 03/01/2010.  
Regulations 39-26-115, 39-26-118.2, 39-26-207 emer. rules eff 03/01/2010; expired 06/01/2010.  
Regulations 39-26-102.3, 39-26-102.13, 39-26-102.21, 39-26-707.1 emer. rules eff. 06/01/2010.  
Regulation 39-26-102.21 emer. rule eff. 06/28/2010.  
Regulation 39-26-102.3 eff. 07/30/2010.  
Regulation 39-26-102.21 eff. 08/14/2010.  
Regulation 39-26-707.1 emer. rule eff. 09/14/2010.  
Regulation 39-26-102.13 emer. rule eff. 09/14/2010.  
Regulation 39-26-707.1 eff. 10/30/2010.  
Regulation 39-26-102.13 emer. rule eff. 01/10/2011.  
Regulations 39-26-102.13; 39-26-113.5 eff. 03/02/2011.  
Regulations 39-26-102.4, 39-26-716.4(A) eff. 08/15/2011.  
Regulations 39-26-102(1.3), 39-26-104(1)(A), 39-26-105(1)(B), 39-26-105.5, 39-26-118(1) eff. 03/03/2014. Regulations 39-26-102.16, 39-26-106.3, 39-26-108, 39-26-501(3), 39-26-502, 39-26-601(3), 39-26-602 repealed eff. 03/03/2014.  
Regulations 39-26-102.17, 39-26-103.5, 39-26-104(1)(B)(I), 39-26-105(1)(A), 39-26-106, 39-26-113.5, 39-26-718 eff. 05/30/2014. Regulations 39-26-102.2.5, 39-26-102.7(b), 39-26-103.5.6, 39-26-104.1(b)(I)(B), 39-26-106.2(a), 39-26-708.2(b), 39-26-709.2, 39-26-715.2(b), 39-26-716.4(b)-(c) repealed eff. 05/30/2014.  
Regulation 39-26-105(1)(B) eff. 07/15/2014.  
Regulation 39-26-706.1 repealed eff. 08/30/2014.  
Regulation 39-26-717 eff. 10/15/2014.  
Regulation 39-26-102.1 repealed eff. 10/30/2014.  
Regulations 39-26-102(17), 39-26-103.5, 39-26-104(1)(B)(I), 39-26-105, 39-26-113.5, 39-26-718 eff. 02/14/2015. Regulation 39-26-104.1(B)(I)(A) repealed eff. 02/14/2015.  
Regulation 39-26-717.1 repealed eff. 04/30/2015.  
Regulation 39-26-105.5 emer. rule eff. 06/03/2015; expired 10/01/2015.  
Regulation 39-26-105.5 eff. 01/14/2016.  
Regulation 39-26-718 eff. 06/14/2016. Regulations 26-204.3, 39-26-703.1, 39-26-705.1, 39-26-707.1(E) repealed eff. 06/14/2016.

Rule 39-26-704(1.5) eff. 03/17/2017.

Rule 39-26-105.3 eff. 07/15/2017. Regulations 39-26-713.2(d), 39-26-713.2(e), 39-26-715.1(a)(II) repealed eff. 07/15/2017.

Rule 39-26-109 eff. 01/01/2018.

Regulation 39-26-718(5)(a), Rule 39-26-105(3) eff. 07/30/2018. Regulations 26-102.14, 26-102.22, 39-26-105.1(c), 39-26-713.2(c) repealed eff. 07/30/2018.

Rule 39-26-105 eff. 08/14/2018. Regulation 39-26-105.5 repealed eff. 08/14/2018.

**Annotation**

Regulation 39-26-102.13 was repealed by House bill 11-1293, eff. 07/01/2012.